

Annikken Håkonsen

The European Rights-Driven Regulatory Approach in the Technology Sector and its Extraterritorial Impact

A Comparative Case Study of the GDPR and the
AI Act

Master's thesis in European Studies

Supervisor: Carine S. Germond

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Abstract

The European Union (EU) has a unique approach to regulating the digital economy by aiming to protect European citizens' fundamental rights. The thesis asks how this approach is exemplified in two of the EU's regulations within the technology sector, the General Data Protection Regulation (GDPR) and the Artificial Intelligence Act (AIA). To answer this, the thesis draws upon the conceptual framework of the EU's rights-driven regulatory approach. The thesis also investigates the scope of the GDPR's extraterritorial impact and whether the upcoming AI Act will have a similar reach. It applies the conceptual framework of the Brussels Effect to investigate the regulations' extraterritorial impacts. The method applied is a qualitative comparative case study analysis. It compares the two case studies, the GDPR and the AIA, and investigates how they exemplify the EU's rights-driven approach and their (possible) extraterritorial impact. This thesis contributes to a detailed insight into the EU's unique regulatory approach for the technology sector and how, despite having a different approach from other digital markets, its regulations experience extraterritorial effects. It provides a thorough investigation of what can be expected of the AIA's extraterritorial impact by comparing it to the impact of the GDPR. The thesis finds that the two regulations are similar exemplifications of the EU's rights-driven regulatory approach. Further, it finds that the GDPR has a significant extraterritorial impact, and it expects the AIA's impact to be similar. However, due to its broader scope, it is less likely it will reach the same extent as the GDPR. By combining these findings it can be argued that the EU, through its regulations, is exporting European values.

Sammendrag

Den europeiske union (EU) har en unik tilnærming til regulering av den digitale økonomien, der målet er å beskytte europeiske borgeres grunnleggende rettigheter. Denne oppgaven spør hvordan tilnærmingen eksemplifiseres i to av EUs reguleringer innenfor teknologisektoren, personvernforordningen og KI-forordningen. For å finne svar på dette tar oppgaven utgangspunkt i det konseptuelle rammeverket for EUs rettighetsdrevne, regulatoriske tilnærming. Oppgaven undersøker også omfanget av personvernforordningens ekstraterritoriale virkning, og om den kommende KI-forordningen vil ha et lignende omfang. Den anvender det konseptuelle rammeverket for Brusseeffekten for å undersøke regelverkets ekstraterritoriale effekter. Metoden som brukes er en kvalitativ komparativ casestudieanalyse. Den sammenligner de to casestudiene, personvernforordningen og KI-forordningen, og undersøker hvordan de eksemplifiserer EUs rettighetsdrevne tilnærming og deres (mulige) ekstraterritoriale effekter. Denne oppgaven bidrar til å gi et detaljert innblikk i EUs unike regulatoriske tilnærming i teknologisektoren, og hvordan EUs regelverk opplever ekstraterritoriale effekter til tross for at de skiller seg fra andre digitale markeders regulatoriske tilnærminger. Oppgaven gir en grundig undersøkelse av hva som kan forventes av KI-forordningens ekstraterritoriale effekt ved å sammenligne den med personvernforordningens betydelige effekt. Den finner at de to forordningene er like i hvordan de eksemplifiserer EUs rettighetsdrevne reguleringstilnærming. Videre finner oppgaven at personvernforordningen har en betydelig ekstraterritoriell virkning, og forventer at KI-forordningen vil ha en lignende effekt, men på grunn av sitt bredere virkeområde er det mindre sannsynlig at den vil nå samme omfang som personvernforordningen. Ved å kombinere disse funnene kan det argumenteres at EU, gjennom sine regelverk, eksporterer europeiske verdier.

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List of Abbreviations

| | |
|------|--|
| AI | Artificial Intelligence |
| AIA | Artificial Intelligence Act |
| EU | European Union |
| ECHR | European Convention on Human Rights |
| FR | Fundamental Rights |
| GDPR | General Data Protection Regulation |
| ILC | International Law Commission |
| MDS | Most Different Systems Design |
| MSSD | Most Similar Systems Design |
| NPE | Normative Power Europe |
| OJ | Official Journal (of the European Union) |
| US | United States |

1 Introduction

1.1 Introducing the Topic

“The EU’s vast regulatory power is the primary source of its global influence and the defining feature of the European digital empire. [...]. This regulatory power externalizes the European rights-driven regulatory model around the world, enabling the EU to play a leading role alongside the US and China in shaping the global digital economy.” (Bradford, 2023, p.325).

The European Union (EU) has a unique regulatory approach that sets it apart from other major regulatory powers. Compared to China’s state-driven regulatory approach and the United States’ (US) market-driven regulatory approach, the EU’s approach to regulating the technology sector is instead rights-driven (Bradford, 2023, p.7). In other words, the EU’s approach when regulating its market is driven by its goal to protect fundamental rights such as e.g. human dignity, data privacy, and democratic discourse (Bradford, 2023, p.105). The EU does this by making sure the rapidly developing technology sector is held accountable and regulated to not be harmful to EU citizens. As with all EU regulations, they are intended for the European market but sometimes they happen to extend beyond EU borders. EU regulations apply to all kinds of actors who provide products or services to this market even though they themselves are not based in Europe. In fact, many of the digital services that European citizens enjoy, like for example different social media or search engines, originate from outside the Union. Partly, the reason for this is because few large tech companies have emerged out of Europe compared to for example China or the US, meaning that EU citizens use many non-EU services (Bradford, 2023, p.108). This means that EU regulations within the technology sector are very probable to have an extraterritorial impact and therefore unintentionally, or sometimes intentionally, exporting European values.

Over the last few years, there has been a substantial transformation in the EU’s approach toward digital tools and technologies, platforms, services, and markets (Müller & Kettemann, 2024, p.624). The EU has increased its regulatory actions to address the challenges posed by the digital age after long embracing a more liberal stance (Müller & Kettemann, 2024, p.624). The General Data Protection Regulation (GDPR) and Artificial Intelligence Act (AIA) are examples of such EU regulations within the technology sector. The GDPR is meant to protect EU citizens’ right to data privacy. The regulation came into force in 2016 and was put into effect two years later (European Commission, 2024a). Now, a new EU regulation within the technology sector is on its way, the EU AI Act. This regulation is meant to set harmonized rules for AI in the Union with the aim of promoting human-centric and trustworthy AI (Council of the EU, 5662/24, Art.1, 2024, p.93). The European Commission laid down a proposal for the regulation in 2021 and on 9 December 2023 the European Parliament and the Council of the EU reached a provisional agreement on the regulation (European Parliament, 2023a). When it finally enters into force, the AIA will become the world’s first rule on AI (European Parliament, 2023a).

These two regulations have in common that they aim to protect EU citizens from harmful consequences that society now faces due to the development and rapid changes within the technology sector. This mission is evident in the EU's statements about its goals for the GDPR and the AIA and in their focus on individuals' fundamental rights. The European Commission (2024a) states regarding the GDPR that "*The regulation is meant to strengthen individuals' fundamental rights in the digital age and facilitate business by clarifying rules for companies and public bodies in the digital single market*". Here, they are clearly underlining the regulations' focus on individuals' rights. Similarly for the AIA, the European Parliament (2023b) states that "*The AI Act aims to ensure that fundamental rights, democracy, the rule of law and environmental sustainability are protected from high risk AI, while boosting innovation and making Europe a leader in the field*". Here, it is also clear that the EU intends for their regulation to serve the purpose of protecting people's rights, as well as protecting other areas that are in people's best interests.

What both the GDPR and the AIA are meant to regulate – processing of personal data and AI systems – have a cross-border nature as is natural for many aspects of the technology sector. Even though both regulations are only legally regulating the jurisdiction that is the EU market, there are aspects to them that have or can cause them to have, an extraterritorial impact. For the GDPR this has already been proven to be the case, while for the AIA only time will tell for certain if there will be a similar effect. Since the GDPR entered into force, many global corporations have adopted the regulation and several leading American tech companies have embraced it as a global privacy standard (Bradford, 2023, p.324). Even foreign governments have used the GDPR as a blueprint when creating their own regulations on privacy (Aridor, Che, & Salz, 2020). Now, as the AI Act will soon be implemented, there are speculations about whether this EU regulation will have a similar global impact as the GDPR. Some (Helberger & Diakopoulos, 2023; Meltzer & Tielemans, 2022; Thelisson & Verma, 2024) are optimistic, while others (Engler, 2022) are more doubtful in their predictions.

As two EU regulations with a seemingly common goal to protect EU citizens' fundamental rights, it is reasonable to assume that they are both examples of the EU's rights-driven regulatory approach. Müller and Kettemann (2024) point out something interesting in the text of the GDPR versus the proposal text of the AIA. In the GDPR's chapter three on the concrete rights of the data subject, there is no clear mention of fundamental rights, whereas for the AIA the proposal of the regulation actively mentions fundamental rights in several places (Müller & Kettemann, 2024). It is thus interesting to investigate each regulation's exemplification of this approach and possible differences. Taking into consideration the two regulations' initial similarities and differences it is also interesting to compare them to predict the outcome of the AIA's possible extraterritorial impact. When the AIA eventually enters into force, will the regulation prove to have a similar extraterritorial impact as the GDPR, or is it unlikely that it will be as significant? The cited quote from the Parliament above where it states that the EU intends to make "*Europe a leader in the field*" on AI can mean that the EU actively wants to influence its regulation on AI onto the rest of the world. Will the EU set yet another global legislative standard for the technology sector with its regulation on artificial intelligence?

1.2 Research Questions and Methodology

This thesis is researching how the General Data Protection Regulation (GDPR) and the Artificial Intelligence Act (AIA) exemplify the EU's rights-driven regulatory approach and their (potential) extraterritorial impact. Most will agree that there is a need for regulations in the technology sector to protect people's fundamental rights from the harmful consequences of both old and new technology. This is the EU's intention with its regulations on data processing and AI systems. As briefly touched upon already, there seem to be some differences between the GDPR and the AIA's text when it comes to their focus on fundamental rights, and it is therefore interesting to compare them to further investigate their potential similarities and differences. When these regulations also have an extraterritorial impact, the protections put in place for European citizens get a further reach beyond the EU market. We already know this to be the case for the GDPR, but will it be the same for the AIA? This study aims to look further into these puzzles.

This thesis is a qualitative comparative case study that will compare the two EU regulations which will be used as the study's two cases. It is a suitable choice of method when studying few cases and looking to compare these to each other (Ljiphart, 1971, p.691). The comparative case study approach is an approach used 'to discover' and can be used to identify specific units of analysis and compare them (Bartlett & Vavrus, 2017). It is relevant to compare the GDPR and the AIA to each other for several reasons. As the AIA has not yet entered into force, it is easier to analyse it when comparing it to a similar regulation that has the elements that the thesis wants to research in the AIA. The GDPR has been in play for almost eight years, so by comparing the AIA to the GDPR it should be possible to make educated guesses on what the AI Act may turn out to become. Due to the regulations' similarities in terms of belonging to the same field, and their overlap in the fundamental rights they aim to protect as well as their cross-border nature, they are very much comparable. The choice of cases and method for this thesis will be further explained and elaborated upon in chapter four.

As already established, this thesis will compare the GDPR and the AIA regarding their exemplification of the EU's rights-driven model and their extraterritorial reach. To do that the thesis asks two main research questions. The first research question and sub-questions are:

- 1) *How and to what extent do the GDPR and the AIA exemplify the EU's rights-driven regulatory approach?*

Is this approach the same for the two regulations, or are they different?

To look at the differences between the two, it is important to find out how each of them exemplifies this approach to regulating the EU market. The thesis does this by using the concept of the EU's rights-driven regulatory approach. This concept portrays how the EU embraces a human-centric approach to regulating the digital economy where fundamental rights and the notion of a fair marketplace form the foundation for regulation (Bradford, 2023, p.9). In other words, the EU acts in a way that elevates the rights of digital citizens to the heart of its policymaking (Bradford, 2023, p.10). This concept is explained in chapter three on conceptual framework where the concept characteristics are also presented. The thesis will answer these research questions by investigating how the GDPR and the AIA fit these characteristics. This study expects the regulations exemplifications of the EU's rights-driven regulatory approach to bear similarities, but also differences. The initial impression

is that this approach is not as evident in the GDPR as it is in the AIA. Because the AIA has not been formally adopted into law at this time, the thesis will utilize the European Commission's proposal from 2021 together with the Council of the EU's publication of the regulation from January 2024 (OJ, C 206, 2021; Council of the EU, 5662/24, 2024). For the GDPR the regulation as published in the Official Journal of the EU will be used (OJ L 119, 4.5, 2016). Further information about data collection and sources will be provided in chapter four.

The second research question concerns another concept and aims to investigate a different aspect of the GDPR and the AIA than the first question and sub-question. Here, there is also one main question and one to follow up on the regulations' comparison on the matter:

2) What is the scope of the GDPR's extraterritorial impact and what extraterritorial impact can be expected for the AIA?

Can we expect their extraterritorial impact to be similar, or will they be different?

This thesis understands 'extraterritorial impact' as when regulations for a set territory reach beyond the area they were originally meant to regulate. In other words, when EU regulations sometimes happen to reach beyond the borders of the EU market. During the examination of the second set of thesis questions, the thesis employs the mechanisms of the Brussels Effect to investigate the (possible) extraterritorial effects of the GDPR and the AIA. The Brussels Effect is defined as the EU's unilateral ability to regulate the global marketplace and essentially explains the same effect as the definition of 'extraterritorial impact' above (Bradford, 2020, p.1). In essence, 'extraterritorial impact' is here used as the effect of EU regulation's reach beyond EU borders, while the 'Brussels Effect' refers to the concept from which the mechanisms used to investigate the two cases originate. Chapter three offers a more detailed explanation of the different definitions and the thesis' understanding of them. This study expects to find that the AIA will possibly have a similar extraterritorial impact as what the GDPR has experienced, although the uncertainty at this time will not provide a definite answer. Because the AIA is not formally adopted into law at this time, there is no way of knowing for certain what impact the regulation will experience. This is a limitation of the study, not knowing if parts of its findings will still apply a few years from now.

1.3 Structure of the Thesis

The thesis consists of eight chapters that will contribute to answering the research questions. The second chapter reviews the existing literature on the field for both the GDPR and the AI Act, and the EU's rights-driven approach and extraterritorial impact in the technology sector. This chapter also argues how this thesis contributes to the field. Chapter three presents the thesis' two concepts: the EU's rights-driven regulatory approach and its extraterritorial impact. Chapter four on methodology explains what method of data collection is used, the qualitative comparative case study approach and justifies the thesis' choice of case studies. In chapter five the thesis describes what the GDPR entails, how it exemplifies the EU's rights-driven model and the regulation's extraterritorial impact. Section 5.2 discusses and provide a conclusion to the first main research question regarding the GDPR, and section 5.3 does the same for the second main research question. Chapter six explains what the upcoming regulation on AI will entail and answers the two

main research questions in sections 6.2 and 6.3. In chapter seven the findings from the previous two chapters are combined and discussed to answer the thesis' two sub-questions. Finally, in chapter eight the thesis concludes that the two regulations follow the same rights-driven regulatory approach according to the characteristics provided by the chosen concept. The GDPR text has less of an obvious focus on fundamental rights than the AIA text from 2024, but this only means that the GDPR refers to fundamental rights more 'unconsciously' and the AIA is more open and vocal about it. The thesis finds that the GDPR has a significant extraterritorial impact with both a de facto and de jure effect. Regarding the AIA, the thesis believes that it will also have a significant impact, although possibly not as grand as that of the GDPR especially considering its possible de jure effect. In the end, the thesis draws a connection between the EU regulations both exemplifying the rights-driven approach and their (possible) extraterritorial impact. All things considered, it can be argued that the EU's regulatory power leads to the EU exporting European values.

2 Literature Review

This chapter presents an overview of the existing literature in the field of the European Union's (EU) General Data Protection Regulation (GDPR) and the Artificial Intelligence Act (AIA). First, the general literature for the two regulations is reviewed in sections 2.1 and 2.2 to show what is mostly accounted for in the fields. Then, section 2.3 will examine the existing literature on the regulations in relation to the EU's rights-driven approach and their extraterritorial reach. Since the thesis is comparing the two regulations, it is natural to also compare how they are presented in the literature, and what is already covered in each of the fields. Finally, this chapter will point out the gaps found in the literature and how this thesis will be able to fill some of these and contribute to the existing literature.

2.1 The General Data Protection Regulation

It is eight years since the GDPR entered into force in 2016, and during this time many academic studies have been published. Most works are on the possible effects and outcomes of the GDPR. What does the GDPR mean for businesses? Economic consequences? How well does it work in practice? These studies are often quantitative, focusing on the concrete results that we gain from numbers and data. The literature is mainly divided between looking at the positive effect of the GDPR and where there are possibilities for improvement. There seems to be a general agreement on the significance of the GDPR and the positive outcomes, but a large part of the literature also casts light upon the challenges that are yet to be dealt with and solutions for how to overcome these problems.

The literature on the GDPR in general seems to be mostly in agreement on the significance and importance of the EU's regulations on data protection (Zaem & Barber, 2020; Gal & Aviv, 2020; Ke & Sudhir, 2023). Zaeem and Barber (2020) write that the GDPR is considered to be the most important change in data privacy regulation in 20 years. They found evidence that the GDPR has made progress in protecting user data but also pointed out that more progress is necessary. Gal and Aviv (2020) also underline that the importance of the GDPR cannot be overstated. They, however, have researched the competitive effects of the GDPR and what effects the regulation has on data markets. Another example of what the general literature on GDPR portrays is Aridor, Che and Salz' (2020) article studying the economic consequences of the GDPR. In other words, a large portion of the literature is research on the effect of the GDPR and what it means for different actors and markets. The literature seems mostly in agreement with the importance of the EU's regulation on data protection and its promising future.

Like any regulation, and perhaps especially one that has such a far reach as the GDPR, there is room for improvement and aspects of the regulation that need fixing. A major part of the literature is focused on what is lacking with the GDPR and provides solutions for its further development. Gal and Aviv (2020) have found that the GDPR has unintended, and so far, unrecognized effects on competition, efficiency, innovation, and the resultant welfare. The two main harmful effects of the GDPR are, according to them, on competition and innovation, limiting competition in data markets and on data sharing between different

data collectors. Marelli and Van Hoyweghen (2020) question whether the GDPR is fit for purpose. They have noted shortcomings in recent ethical, socio-political, legal, and policy scholarship. The most common literature on the GDPR is in other words usually research on how the GDPR has measured up so far after adoption, what works and what does not, and measures recommended to improve the unintentional and undesired effects.

2.2 The Artificial Intelligence Act

Considering the regulation is yet to be implemented one could imagine there would be little material available. Even so, since the European Commission presented its proposal in 2021, there is already considerable literature on the topic of the AIA. The existing literature on the field is quite speculative, characterized by the fact that this regulation has not yet been formally adopted. A big part of the field is merely describing what the AIA is and what it will (probably) entail once it is adopted. Other literature focuses on probable challenges and opportunities the regulations will present, as well as providing inputs for improvement.

The literature on the field of Artificial Intelligence (AI) and the AIA seems to agree that regulations on AI, and more specifically the EU AIA is an important and necessary initiative (Ahmed, Fatima & Abbas, 2024; Musch, Borrelli & Kerrigan, 2023; Smuha, et.al., 2021;). A large portion of the literature is simply explaining what the AI Act is, what it will entail and its scope (Edwards, 2021; Musch, et.al., 2023; Thelisson & Verma, 2024; Veale & Zuiderveen Borgesius, 2021). Different scholars portray the areas where the AIA can be of help and in what fields it can provide improvement. The literature in general looks at different actors or areas that will likely be affected by this new regulation, and what the effects will probably be. For instance, Ahmed, et.al (2024) examine the various ways in which AI has been incorporated into the European legal system, the areas where this has led to improvement and areas where challenges arise due to the fact. Thelisson and Verma (2024) study the governance structure proposed by the AI Act and propose tools to conduct AI systems. The general literature on the AIA is in other words quite introductory and speculative since the regulation is yet to be formally adopted.

Another major part of the literature on the field covers the possible implications of the EU AI Act and provides ensuing critique and suggestions for improvement. Veale and Zuiderveen Borgesius (2021) for example have written an article where they analyse the good, the bad, and the unclear elements of the proposed approach. They found that some provisions of the draft of the AIA have surprising legal implications. Smuha, et.al. (2021) have responded to the European Commission's proposal for AIA and presented how they think the EU can achieve legally trustworthy AI. They argue that the proposal fails to reflect fundamental rights, that it does not provide an effective framework for the enforcement of legal rights and duties and that it fails to reflect adequate protection for democracy. Based on the shortcomings they present they provide detailed recommendations for the Proposal's revision. Laux, Wachter and Mittelstadt (2024) have written an article about trustworthy AI and the EU AIA. They argue that the EU has adopted a simplistic conceptualization of trust and is overselling its regulatory ambition. What is however worth noting is that much of the critique on the field stems from right after the AI Act proposal in 2021 and is mostly critique and suggestions for the revision of the Act before final adoption.

2.3 The EU's Rights-Driven Approach and Extraterritorial Impact in the Technology Sector

Oftentimes, the literature on the EU's extraterritorial reach in the technology sector and its rights-driven approach go hand in hand. The leading scholar in both these fields is Anu Bradford with her books on the Brussels Effect (2020) and Digital Empires (2023). In her book on the world's digital empires – China, the EU, and the US – Bradford portrays how the EU's rights-driven model is evident in the Union's regulations of the technology sector. The Brussels Effect is Bradford's book on the EU's regulatory power and explains the Union's unilateral ability to regulate the global marketplace. Others have also written about this rights-driven approach of the EU and its regulations' extraterritorial impact, but no one to the same extent as Bradford has. This thesis, however, contributes something new to the field by connecting both concepts and looking exclusively at two EU regulations within the technology sector – the GDPR and the AIA. This gives for an in-depth study of the two regulations whereas Bradford focuses on the technology sector as a whole.

A large amount of the other literature on the GDPR and AIA mentions the regulations' rights-driven approach indirectly and is not the focus of their research. Most of the literature on this approach is on the technology sector in general, and usually just briefly mentions the rights-driven principles of the GDPR or the AIA. A few scholars however do look more closely at the EU's rights-driven approach in connection with these two regulations. Veit (2022) has written about the European approach under the GDPR for safeguarding regional data protection rights on the global internet. He states that the EU is setting an example with the GDPR and that it "*provides for different instruments to ensure the effective enforcement of its provisions not just within the EU but also extraterritorially*" (Veit, 2022). This underlines that the literature on the EU's rights-driven approach and extraterritorial impact often aligns and intertwines. The AIA's cross-border nature combined with the EU's ambition for it to protect fundamental rights, makes it inherent that this is also reflected in the literature. More so than in the literature on the GDPR. Most of the literature on the field addresses how the EU wants to hold actors in the technology sector accountable to ensure the protection of fundamental rights in the EU (Ahmed, Fatima & Abbas, 2024; Helberger & Diakopoulos, 2023; Smuha, et.al., 2021; Thelisson & Verma, 2024). Although this rights-driven approach seems to be more prominent in the literature for the AIA than for the GDPR, there is still little research done specifically on this approach, something this thesis aims to provide to the field.

Müller and Kettemann (2024) are some of the few who have researched the EU's approach to regulating digital technologies. They discuss how the EU has changed its stance and ramped up its regulatory actions to address the challenges posed by the digital age. Both the GDPR and AIA are accounted for in this research, as well as other regulations by the EU within the technology sector. An interesting point they present is that in the GDPR's chapter three on the concrete rights of the data subject, there is no clear mention of fundamental rights (Müller & Kettemann, 2024, p.632). They have however found that the regulation refers to fundamental rights 'unconsciously'. The AIA proposal from 2021 on the other hand does mention fundamental rights in a few places (Müller & Kettemann, 2024, p.633). This could explain why there is almost no literature on the GDPR that addresses the EU's rights-driven model, while a large part of the literature on the AIA does at least acknowledge it. Overall, few publications are focusing specifically on the EU's rights-driven approach to these two regulations with a few exceptions like Müller and Kettemann, and Bradford. This is another gap that this thesis is looking to fill, the lack of in-depth research

on the two regulations regulatory approaches, and the comparison of the two to investigate if the EU's approach is the same for regulations within the technology sector.

When it comes to literature on the regulations' extraterritorial impact there seems to have been done more research than on the EU's rights-driven approach. Especially for the GDPR, several papers mention the regulations' impact on non-EU actors (Aridor, Che & Salz, 2020; Ryngaert & Taylor, 2020; Tankard, 2016; Zaem & Barber, 2020). However, these publications do not constitute a large part of the literature and there is little in-depth research. The AIA's possible extraterritorial impact is a highly discussed probability in the literature that many are interested in. It seems undeniable at this point that the AIA will have influence beyond the EU market, but the extent of it is still unknown. This has not however stopped scholars from speculating about the regulations' possible reach. Some of them refer to the EU's possible extraterritorial impact as the Brussels Effect (Meltzer & Tielmans, 2022; Li, Schütte & Sankari, 2023), while others do not think the Brussels Effect for the AIA will be as great as many others seem to believe (Engler, 2022). By using the concept of the Brussels Effect examining how the AIA fulfils these mechanisms and comparing the findings to the findings of the GDPR this thesis aims to contribute to the field by providing educated predictions on this matter.

For both the literature on the GDPR and the AIA, several scholars draw a connection between the two regulations when they address their (possible) extraterritorial impact and the EU's rights-driven approach. Especially for the literature on the AIA, there is overlap with the literature on the GDPR as it seems like many use the results of the GDPR to speculate on the outcome of the AIA (Ahmed, Fatima & Abbas, 2024; Helberger & Diakopoulos, 2023; Thelisson & Verma, 2024). This overlap is oftentimes the AIA literature mentioning the GDPR or referring to it in passing and not actively doing a comparative study. This is especially the case for the regulation's exemplification of the EU's rights-driven regulatory approach. The academic player closest to having done this to some extent is Anu Bradford in her book on Digital Empires (2023). However, in her book, she first and foremost compares the EU's rights-driven model to that of the US' market-driven and China's state-driven models and does not compare the GDPR and AIA to each other. She merely mentions and discusses them in her book.

The lack of research on the two regulations, particularly in conjunction with the EU's rights-driven approach and their extraterritorial impact leaves a gap in the existing literature. As stated above, some scholars have briefly touched upon these phenomena for the GDPR or the AIA, but few do this in-depth or by comparing the two regulations. This thesis contributes to the field by providing a thorough study of how these two EU regulations exemplify the Union's unique rights-driven approach to regulating the digital economy and how such regulations experience extraterritorial impact. We know the GDPR has had a significant impact, but few studies investigate how this has come to happen. Overall, the literature on the field seems to lack a proper investigation and comparison of the two regulations, both considering their approaches and their extraterritorial impacts. This thesis' examination of the AIA's rights-driven approach and comparison to the GDPR fills a gap by providing an educated prediction of the AIA's possible extraterritorial impact. Existing literature does touch upon this potential of the AIA, and some even draw a comparison to the GDPR, but the field lacks a more comprehensive study on this. This thesis aims to fill this gap in the literature by performing a detailed investigation of the two regulations to make predictions on the AIA's possible extraterritorial impact. This thesis will provide a thorough comparison of the regulation's fulfilments of the characteristics of the EU's rights-driven regulatory approach and the mechanisms of the Brussels Effect, to

see if they are similar enough that it can tell us whether the AIA will have a similar impact as the GDPR. In the next chapter, the thesis presents the conceptual framework for this study.

3 Conceptualising the EU's Rights Driven Approach and Extraterritorial Impact

This chapter is an exposition of the two concepts used to answer the thesis' research questions. Section 3.1 explains the concept of the EU's rights-driven regulatory approach and section 3.2 explains the concept of EU regulations' extraterritorial impacts. Both sections justify the choice of concepts and present their characteristics and mechanisms which will later be utilized in the investigation of the two cases, the General Data Protection Regulation (GDPR) and the Artificial Intelligence Act (AIA). Finally, section 3.3 explains how the thesis plans to operationalize the concepts in the analysis.

3.1 The EU's Rights-Driven Regulatory Approach

The concept of the EU's rights-driven approach helps the thesis answer the first research question: *How and to what extent do the GDPR and the AIA exemplify the European Union's (EU) rights-driven regulatory approach?* This section justifies the choice of concept and explains what it entails.

In her book "Digital Empires" Anu Bradford explains that the EU's regulatory approach in the technology sector is different from other market models by focusing on and prioritizing the protection of EU citizens' fundamental rights (Bradford, 2023, p.11). Now, this is not a ground-breaking discovery or new development. The European Convention on Human Rights (ECHR), an international treaty to protect human rights and fundamental freedoms in Europe, traces back to 1950 (Official Journal, 2024). This focus has continuously been reflected ever since in the Union's treaties and regulations. Some examples of this are the Treaty of the European Union from 1992 and the Charter for Fundamental Rights of the European Union (the Charter) which entered into force in 2009 (European Union, 2024). Further, fundamental rights protection in the law of the Union has been recognized as a general principle of law since 1969 (Peers, Hervey, Kenner & Ward, (Eds), 2021). In other words, protecting EU citizens' fundamental rights has been a priority of the EU for a long time.

This concept of the EU's rights-driven approach is in other words based on the history of the EU valuing fundamental rights and its continuous updating of these. Article 2 of the Treaty of the European Union stipulates that: *"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail"* (OJ C 202, 7.6., Art.2, 2016). The concept explains that the EU chooses to regulate its market focusing on protecting fundamental rights such as human dignity, data privacy, and democratic discourse (Bradford, 2023, p.105).

Today, the Charter is the most relevant and complex document that EU legislators, and the concept of the rights-driven approach, refers to when addressing fundamental rights in the Union (European Commission, 2024b). The European Commission explains it as "a

modern and comprehensive instrument protecting and promoting people's rights and freedoms in the light of changes in society, social progress and scientific and technological developments" (European Commission, 2024b). The six chapters of the Charter divide the regulations within the areas of dignity, freedoms, equality, solidarity, citizen's rights, and justice (European Commission, 2024b). The Charter also includes 'third generation' fundamental rights to better reflect modern society, these being data protection, guarantees on bioethics, and transparent administration (European Commission, 2024b). These values are also closely linked to, and guiding, the EU's internal and external action (European Commission, 2024b). The foundation of the EU's rights-driven approach is the belief that the government should be the one to establish the rules to protect the individual. In the EU these rules are drafted to specifically reflect European values as enshrined in the Charter. What the concept in other words means is that the EU has chosen an approach that secures the government's position to regulate the market so that EU citizens' fundamental rights are protected.

The concept is very applicable to the EU's digital regulation. Political leaders of the EU frequently embrace fundamental rights as the cornerstone of the EU's digital policy in their public statements (Bradford, 2023, p. 111). The EU's commitment to protecting fundamental rights manifests particularly in its regulatory approach to data protection, artificial intelligence, and online content regulation—all policy areas that have become central pillars of the European regulatory model. (Bradford, 2023, p. 110). This makes the rights-driven approach especially relevant for this thesis. The EU believes that tech companies need rules. More than others, the EU is concerned that tech companies do not understand how technology implicates constitutional democracy and fundamental rights and that their products and services are frequently undermining this (Bradford, 2023, p. 106). This is why the EU believes governments should regulate tech companies and why EU regulations are drafted to reflect European values and protect fundamental rights. For example, the EU can restrict online content on social media if it is to protect EU citizens' fundamental rights or restrict online speech in the name of democratic discourse (Bradford, 2023, p. 105-106). The rights-driven model justifies government intervention in the name of safeguarding individual rights and the political autonomy of its citizens (Bradford, 2023, p. 108). It also involves citizens and their elected representatives engaging in democratic debate. This decides what the best interests of citizens should entail and what form of regulatory intervention should take (Bradford, 2023, p. 108). In other words, if the need arises to protect the fundamental rights of European digital citizens, the EU will take action to ensure this through legislation.

To better show how the European model differs from others, it is relevant to show this compared to the other two dominant digital powers: the United States' (US) and China's models. Where the US has a largely market-driven regulatory model, China has a state-driven model (Bradford, 2023, p. 7). The US market-driven model focuses on protecting free speech as the fundamental right, as well as the free market and incentives to innovate (Bradford, 2023, p. 8-9). It has been praised for its ability to nurture tech companies, but this economically beneficial model often comes at the expense of risking fundamental rights, human dignity, political autonomy, and democracy (Bradford, 2023, p. 8). The EU's rights-driven model on the other hand seeks to balance the right to free speech with a multitude of other fundamental rights, including human dignity and the right to privacy (Bradford, 2023, p. 9). The Chinese state-driven model aims to maximize the country's technological dominance while maintaining social harmony and control over its citizens' communications (Bradford, 2023, p. 8). This has led to increased criticism from democratic countries (Bradford, 2023, p. 9). In comparison, the EU model aims to strengthen and

improve the rights of citizens towards both tech companies and the state instead of decreasing them (Bradford, 2023, p. 9). The EU, by adopting its own humancentric and rights-driven approach to digital regulation, clearly demonstrates its unwillingness to align itself with either the US or China (Bradford, 2023, p. 105).

The rights-driven regulatory model of the EU has, as one can imagine, received praise from several holds for protecting fundamental rights and democracy (Bradford, 2023, p. 10). But there are also negative responses to this regulatory approach from both inside and outside the EU. Critics argue the EU overdoes its rights-driven regulation, damaging economic progress and political freedom in the process (Bradford, 2023, p. 10). Many view this model as overly protective, compromising tech companies' incentives to innovate, and thereby curtailing the technological and economic progress that societies depend on (Bradford, 2023, p. 10). The fact that few tech giants emerge from Europe is something that critics point out. To some extent, this is blamed on the EU's protective regulations that are argued to interfere with tech companies' innovative zeal (Bradford, 2023, p. 10). This model has also received criticism for being restrictive of free speech. Especially from American counterparts who value free speech as *the* fundamental right. They allege that the European rights-driven model risks undermining free speech and stifling public debate (Bradford, 2023, p. 10).

Because the EU's focus on protecting fundamental rights is not something new but rather an inherent part of the EU's legislation throughout the years, there are naturally also other concepts explaining this phenomenon. An example of this is Manners (2002) with the concept of Normative Power Europe (NPE). He states that the EU is normatively different to other polities with its commitment to individual rights and principles by the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the United Nations (UN) (Manners, 2002, p. 241). It also covers the international role of the EU as a promoter of norms. This thesis however has chosen Anu Bradford's concept on the EU's rights-driven regulatory approach in the belief that it is better suited for this study. As Bradford has stated about this concept, it is very well present in the EU's regulatory approach to data protection, artificial intelligence, and online content regulation which makes it a good match for this thesis. It also gives an updated view of the EU's regulatory approach in the technology sector which is relevant for the thesis' comparative study of the GDPR and the AIA. In addition to being a newer concept than for example NPE, Bradford's concept is also more specific to the technology sector. A final point is how NPE focuses on individuals' rights per the ECHR and the UN. As we know the ECHR dates back to 1950, and a lot has happened in the development of the EU's legislation since then. Bradford's concept focuses more on the EU's recent legislative developments such as the Charter (Bradford, 2023, p.106). The Charter is not only newer than the ECHR but also updated in terms of including 'third generation' fundamental rights to better reflect this modern society. One of these three is data protection and highly relevant to this thesis.

Technology is a rapidly developing sector, and it therefore makes sense to use a newer concept that better reflects, not only the most recent technological developments but also the new challenges they pose. In the technology sector, these challenges are often of a cross-border nature and can have harmful consequences e.g. personal data and privacy. This is supported by Müller and Kettemann's claim that the EU has undergone a significant shift in its approach toward digital tools and technologies, platforms, services, and markets in recent years (Müller & Kettemann, 2024, p. 624). They further claim that the EU used to take a more liberal stance but has since ramped up its regulatory actions to address the challenges posed by the digital age (Müller & Kettemann, 2024, p. 624). This underlines

the importance of using a newer concept when analysing this effect in the relevant EU regulations.

3.2 The EU's Extraterritorial Impact

The concept of the EU's extraterritorial impact helps answer the second research question: *What is the scope of the GDPR's extraterritorial impact and what extraterritorial impact can be expected for the AIA?* This thesis applies Anu Bradford's concept, the Brussels Effect, to investigate the two regulations (possible) extraterritorial effects. To explain the concept, it is first important to clarify what understanding of 'extraterritorial' will be utilized since there exist different definitions of the term depending on what it explains. Section 3.2.1 will look at three definitions of the term 'extraterritorial' together with Bradford's term 'Brussels Effect'. The section finds that all compared definitions convey the same meaning. Either one of the terms will be utilized in the thesis to refer to the effect in general – extraterritorial – or to refer to the specific conceptual framework the analysis will be based on explaining this effect – the Brussels Effect. Section 3.2.2 will account for the mechanisms of the Brussels Effect: market size, regulatory capacity, stringent standards, inelastic targets, and non-divisibility.

Other concepts also explain how EU values and regulations have an extraterritorial impact, like Europeanization or External Governance. Featherstone and Radaelli (2003) state that the scope of 'Europeanization' is broad, stretching across existing member states and applicant states, as the EU's weight across the continent grows. For this thesis, Europeanization focuses too much on the internal integration of the EU member states and candidates. In comparison, the Brussels Effect focuses strictly on the EU's extraterritorial impact – its impact and regulatory power outside of the EU. Lavenex and Schimmelfennig (2010) in their article on "EU External Governance" state that the EU has developed a wide array of external relations with its neighbouring countries and is attempting to transfer its rules and policies to non-member countries. However, both External Governance and Europeanization focus heavily on the European continent and neither focus on the world in general. The concept of the Brussels Effect is a good fit because it focuses specifically on the EU's regulatory power which is highly relevant for comparing two EU regulations. Bradford not only states that some EU regulations have an extraterritorial impact, but she also provides detailed explanations of why and how this happens. In other words, Bradford provides a concept that is possible to utilize and follow when researching whether a regulation may have an extraterritorial impact. The provided definitions and mechanisms of the concept will be used in the analysis of this thesis to investigate and explain the scope of the GDPR's extraterritorial impact and whether something similar can be expected of the AI Act.

3.2.1 Defining «Extraterritorial»

The deterritorialization of the internet and international communications technology has given rise to acute jurisdictional questions regarding who may regulate online activities (Ryngaert & Taylor, 2020). Because there is no global regulator, states act unilaterally, applying their laws to transborder activities (Ryngaert & Taylor, 2020). Some of these laws end up having a so-called extraterritorial impact. This is also the case for the EU and specific regulations within the technology sector. The term 'extraterritorial' is a somewhat disputed concept that does not have a widely accepted definition constituting

extraterritorial jurisdiction (Kuner, 2015). Its lack of clarity and consistency has made for criticism of the term (Kuner, 2015). This position is further substantiated by Kamminga (2020) who states that there is an absence of a universally accepted definition for the term. It is an elusive concept that includes a wide variety of practices and its meaning therefore depends on the definition one chooses to use (Kamminga, 2020).

Cremona and Scott (2019) have done research on EU law beyond EU borders. In their work, they defined this impact as the 'global reach' of EU law (Cremona & Scott, 2019). They further explained what they meant by stating that "*It includes the extraterritorial application of EU law, the presence of territorial extension, and the so-called 'Brussels Effect', all phenomena concerned with the efforts of unilateral legislative instruments and regulatory action beyond the EU's borders.*" (Cremona & Scott, 2019). Here, they mentioned the Brussels Effect and gave a similar definition to the concept as Anu Bradford (2020) has done. She defines the Brussels Effect as "*the EU's unilateral ability to regulate the global marketplace*" (Bradford, 2020, p. 1). Both studies are done on EU law specifically, which may also explain why they are similar.

Kuner (2015) has investigated extraterritoriality and regulation of international data transfers in EU data protection law and into extraterritoriality as a jurisdictional concept. He, in comparison to Cremona, Scott, and Bradford, has not used a definition specific for the EU, but a more general definition. He finds the definition provided by the International Law Commission (ILC) useful: "*an attempt to regulate by means of national legislation, adjudication or enforcement the conduct of persons, property or acts beyond its borders which affect the interests of the State in the absence of such regulation under international law*" (Kuner, 2015). This definition mostly says the same as the other definitions mentioned thus far, with the exception that this one does not mention the EU or any other actor specifically. In other words, it provides a more general definition of the term. Taylor (2015) has written an article on the EU's human rights obligations concerning its data protection laws with extraterritorial effect. Similarly to Kuner, Taylor has researched the EU's data protection law but explains the term 'extraterritoriality' as "*implying something with a nature or effect beyond a territory, not completely a-territorial*" (Taylor, 2015). This is a shorter definition than the others and not as specific, but still conveys the same meaning.

These four definitions have in common that they are all used to define the extraterritorial impact of EU law. Two of the concepts mention the EU in their explanation while the other two are more general and do not mention the EU or any other actor. Either way, they are all used in research done on the EU's extraterritorial reach and largely convey the same meaning. This may explain how these are all similar despite Kuner (2015) and Kamminga (2020) expressing that the term has no widely accepted definition. All definitions express that the extraterritorial impact is a case of national regulations, or regulations for a set territory, that reaches beyond the area they were originally meant to regulate. For this thesis, this is what is meant by the EU regulations 'extraterritorial impact'. In connection with the Brussels Effect, this will be used to explain and decipher the GDPR and the AIA's extraterritorial impact later in the thesis.

3.2.2 The Brussels Effect

The concept of the Brussels Effect explains that the EU, by regulating its own market, sometimes end up also regulating markets outside of the EU. This is due to some of the EU regulations having an extraterritorial impact. Bradford reserves the term 'Brussels

Effect' to capture the phenomenon where the markets are transmitting the EU's regulation to both market participants and regulators outside the EU (Bradford, 2020, p.1). This section will account for the workings of this concept that in turn will help explain the extraterritorial impact of the GDPR and provide the tools to try and predict what impact the AI Act will have. There are some mechanisms for the Brussels Effect that need to be in place for an extraterritorial effect to materialise: Market size, regulatory capacity, stringent standards, inelastic targets, and non-divisibility (Bradford, 2020, p. 25). These are presented in Table 1.

Table 1: Mechanisms of the Brussels Effect

| Mechanisms | Explanation |
|---------------------|--|
| Market size | The large size of the EU market makes it more likely that companies will adjust to its standards. |
| Regulatory capacity | The EU need the ability to promulgate and enforce regulations, for example by imposing fines or denying access to its market. |
| Stringent standards | Stringent regulations are costly to uphold as they sometimes come at the expense of the profitability of a country's firms. Hence, more likely to be found in wealthier countries. |
| Inelastic targets | The location of the consumer, not the manufacturer, determines the application of the targeted product. |
| Non-divisibility | Global corporations must voluntarily choose to extend the regulatory requirements of the most stringent regulator to their global operations. |

Source: Author's own compilation based on the conceptual framework of Bradford (2020, p.25-55).

Market size is an important mechanism of the Brussels Effect. If the market implementing regulations is small, other actors and markets have little incentive to adjust according to its regulations. Assuming the market of the importing country is of significant size relative to the exporting country it is more likely that companies will adjust to the standards of the importing country (Bradford, 2020, p.27). The EU is the second largest economy in the world, the second largest importer of goods, and the largest importer of services, which means that the EU has the market size needed for its regulations to have an extraterritorial impact (Bradford, 2020, p.27). In addition to market size, there also needs to be a conscious choice by the state to be a regulatory power (Bradford, 2020, p.30). Bradford's definition of regulatory capacity is "a jurisdiction's ability to promulgate and enforce regulations", and an important element of this is having the authority to impose sanctions in case of noncompliance (Bradford, 2020, p.31). This is something the EU is known for doing and for having accomplished a deterrent effect (EEAS, 2021). For example, if a certain product or service does not meet the EU's regulatory requirements, the Commission may deny it access to the EU market by banning it from being offered in its territory (Bradford, 2020, p.34). Also, if companies fail to obey regulations, the EU has the authority to impose significant fines (Bradford, 2020, p.34).

The third mechanism needed for the Brussels Effect to materialise is stringent regulations. Wealthier countries can better afford to pursue environmental and consumer protection, even at the expense of the profitability of their firms (Bradford, 2020, p.37). This makes stringent regulations more likely to be found in countries with high levels of income. Less

wealthy countries on the other hand remain more sensitive to the costs of regulation that constrain business activity and hence limit economic growth (Bradford, 2020, p.37). After a shift in the 1990s Europeans became more aware of the different risks society was facing which nurtured a “precautionary risk culture” and elevated the need for regulation in the eyes of the public (Bradford, 2020, p.38). Since then, the EU has increasingly been adopting more stringent consumer and environmental protection standards (Bradford, 2020, p.37).

Stringent domestic regulations can only operate as global standards when aimed at inelastic targets (Bradford, 2020, p.48). Bradford defines “inelastic targets” as products or producers that are non-responsive to regulatory change and hence tied to a certain regulatory regime (Bradford, 2020, p.48). This means that when a non-EU actor wants to sell a product to an EU citizen the location of the consumer within the EU, not the location of the manufacturer, determines the application of the targeted product (Bradford, 2020, p.48). Consumer markets have an inelastic nature, forcing producers to comply with its regulations or lose access to the market. This is because EU consumers cannot simply be transferred to another jurisdiction with less stringent regulations, like what is possible to do with capital (Bradford, 2020, p.49). The EU primarily regulates inelastic consumer markets, such as food safety or data privacy (Bradford, 2020, p.48).

The final mechanism for the Brussels Effect to take place is non-divisibility. Bradford defines non-divisibility as the practice of standardizing production or business practices across jurisdictions and hence applying a uniform standard to govern the corporation’s global conduct (Bradford, 2020, p.254). The previous four mechanisms only ensure that the stringent jurisdiction can regulate extraterritorially, but they do not mean that stringent standards will be globalized (Bradford, 2020, p.53). It is only when global corporations voluntarily choose to extend the regulatory requirements of the most stringent regulator to their global operations that global standards emerge (Bradford, 2020, p.53). For a producer to tailor their products to several markets they must comply with several regulations which can be costly and sometimes also not practically possible. Instead of producing several variants of the product, the producer can choose to make the most stringent regulation the standard for all their products. This way the producer’s product is compliant with every market’s regulation. The Brussels Effect encourages firms to standardize production and it also unavoidably limits the product variety that is available on the market (Bradford, 2020, p.54).

The Brussels Effect can be unintentional and intentional. Usually, the EU does not have to do anything but simply regulate its market to exercise global regulatory power (Bradford, 2020, p.2). There are two different variants of the Brussels Effect according to Bradford, being the ‘de facto’ and the ‘de jure’ Brussels Effects. The former explains how global corporations respond to EU regulations by adjusting their global conduct to EU rules (Bradford, 2020, p.2). The latter explains how foreign governments adopt EU-style regulations when multinational companies adjust their global conduct to conform to EU rules, which means they have the incentive to lobby EU-style regulations to their home jurisdictions (Bradford, 2020, p.2). In other words, the de jure effect is built directly on the de facto effect. It is however worth mentioning that there are also other reasons why foreign governments may adopt EU-style regulations, so it does not have to be rooted in the de facto Brussels Effect. Bradford therefore presents a less strictly defined version of the de jure effect by stating that it can also be used to describe a broader set of mechanisms that transmit EU rules to foreign jurisdictions (Bradford, 2020, p.2). For example, the EU also export its regulations through various economic and political treaties

and via international organizations and governmental networks (Bradford, 2020, p.2). Bradford’s book on the Brussels Effect has used this less strict definition for the de jure Brussels Effect, and that is what this thesis will do as well.

3.3 Operationalising the EU’s Rights-Driven Approach and Extraterritorial Impact in the GDPR and the AIA

To operationalize the two concepts presented in this chapter, the thesis systematically investigates how the GDPR and the AIA fit the characteristics and fulfil the mechanisms of the two concepts. Tables 2, 3, and 4 explain what questions the thesis will ask to attempt to answer whether the regulations fit the concepts or not. Table 2 illustrates how the thesis uses the concept of the EU’s rights-driven regulatory approach’s characteristics to discover whether the two regulations do in fact exemplify this regulatory approach.

Table 2: Detecting the exemplification of the EU’s rights-driven regulatory approach in the GDPR and AIA

| Characteristics of the rights-driven regulatory approach | GDPR and AIA characteristics |
|---|--|
| Focus on fundamental rights and connection to the Charter | <ul style="list-style-type: none"> • Is there a clear focus on fundamental rights and connection to the charter? • Do the regulations promote the protection of fundamental rights as enshrined in the Charter? |
| Government intervention | <ul style="list-style-type: none"> • Do the regulations allow government intervention? • Do the regulations implicate that the state is needed to regulate tech companies to protect citizens' fundamental rights? |
| Strengthening and improving the rights of citizens | <ul style="list-style-type: none"> • Are the regulations contributing to strengthening and improving the rights of citizens? • Are the regulations expanding upon and strengthening the rights enshrined in the Charter? |
| Restriction of free speech, online content, or other fundamental rights | <ul style="list-style-type: none"> • Do the regulations seek to balance the right to free speech with other fundamental rights that might be contradictive? • Do the regulations partially restrict certain fundamental rights to better protect 'their' fundamental rights? |

Source: Based on the conceptual framework of Bradford (2023).

The thesis investigates the GDPR and the AIA’s regulatory approaches by looking at four prominent characteristics of the concept, as presented in the table above. First, do the two regulations have a clear focus on fundamental rights and connection to the Charter? Second, do they allow government intervention? Third, are they strengthening and improving the rights of EU citizens as enshrined in the Charter? Fourth, do they restrict any fundamental rights in favour of better protecting the rights they are specifically meant to protect? By asking these questions, the analysis will be able to investigate if the regulations are cases of the EU’s unique regulatory approach. Examining specific characteristics in both regulations also makes them possible to compare. This way the

thesis can put them up against each other to recognize similarities or differences in their regulatory approaches. Table 3 illustrates how the thesis uses the mechanisms of the Brussels Effect to decide whether the regulations have the potential to have an extraterritorial impact and become global standards.

Table 3: Detecting the scope of the GDPR and AIA’s extraterritorial impacts

| Mechanisms needed for an extraterritorial impact | GDPR and AIA mechanisms |
|---|--|
| Market size | <ul style="list-style-type: none"> Does the EU market have the size and attractiveness to be an incentive for non-EU actors to comply with the GDPR or the AIA to gain market access? |
| Regulatory capacity | <ul style="list-style-type: none"> Does the EU have the capacity to promulgate and enforce the GDPR and the AIA? Does the regulations include sanctions for non-compliance? |
| Stringent standards | <ul style="list-style-type: none"> Are the GDPR and the AIA considered stringent standards? A stringent standard is important for a regulation to achieve non-divisibility. |
| Inelastic targets | <ul style="list-style-type: none"> Are the targets for the technology companies that are affected by the GDPR and AIA inelastic targets? |
| Non-divisibility | <ul style="list-style-type: none"> Do (or will) global corporations make the GDPR and the AIA their single regulatory standard for their global conduct? |

Source: Based on the conceptual framework of Bradford (2020).

As Bradford has stated about the concept, the four first mechanisms, market size, regulatory capacity, stringent standards, and inelastic targets are needed for the EU to achieve extraterritoriality for its regulations. For them to become global standards, however, they must also achieve non-divisibility. The thesis therefore examines whether these mechanisms are fulfilled for the GDPR and the AIA separately. When each regulation has been examined, the findings are compared to predict whether the AIA’s possible extraterritorial impact will be similar to what the GDPR has experienced. Table 4 illustrates the two different kinds of Brussels Effect, the de facto and the de jure effects.

Table 4: Detecting the GDPR and AIA’s type of Brussels Effect

| Brussels Effect | |
|--------------------------|---|
| De facto Brussels Effect | <ul style="list-style-type: none"> Have (or will) tech companies adopt the GDPR and the AIA as the regulatory standard for their conduct? |
| De jure Brussels Effect | <ul style="list-style-type: none"> Have (or will) foreign governments adopt domestic regulations similar to or inspired by the GDPR and the AIA? |

Source: Based on the conceptual framework of Bradford (2020).

For the GDPR the thesis explores the regulation’s extraterritorial reach to determine whether it only has a de facto effect, or if it also has a de jure Brussels Effect. The investigation of the AIA’s extraterritorial effect is more challenging since it has not happened yet. The thesis will use the findings from how the AIA fulfils the mechanisms of

the Brussels Effect to determine whether it is probable for it to have an extraterritorial impact and if it is likely to just have a de facto effect or also a de jure effect. The next chapter explains and justifies the thesis' chosen method of data collection and research design.

4 Methodology

This chapter accounts for the methods used to answer the research questions. To do this, the thesis uses a qualitative comparative case study approach. Section 4.1 justifies the thesis' method of data collection and the most relevant sources examined for each of the case studies, the General Data Protection Regulation (GDPR) and the Artificial Intelligence Act (AIA). Section 4.2 explains the research method and connects it to the thesis' two cases to explain how the comparative case study approach is the right method for this particular study. Finally, section 4.3 considers some limitations to this study caused by the case study selection.

4.1 Data Collection and Sources

Desk work and analysing different primary and secondary sources is this thesis' method of data collection. In other words, a qualitative research thesis. This research method entails analysing data by identifying patterns tied to instances of a phenomenon and then developing a sense of the whole phenomenon as informed by those patterns (Levitt, Bamberg, Creswell, Frost, Josselson & Suárez-Orozco, 2018). Compared to quantitative research, qualitative research typically uses fewer and different kinds of sources and often different methods of collecting data. The qualitative approach includes rich, detailed, and heavily contextualized descriptions for each source (Levitt, et.al., 2018). It is used to develop understanding in a less explored area. This is what the thesis will be doing: analysing several sources to gain an understanding of the field in question and from there reach conclusions on the matter. This thesis will not be conducting interviews or observing environments or people as a matter of collecting data. The reason is that the required research material is available to collect and process through desk work. The GDPR and the AIA legal texts and proposals are among the most important contributions to this research. Thus, it is not relevant to be observing environments when this task is best done by data collection through desk work. Interviews, although a great tool to gain others' thoughts and opinions are not deemed necessary to carry out this research. The European Union's (EU) websites and press releases together with different scholars' research articles on the topic provide input from different perspectives sufficient to make educated conclusions.

For primary sources, the official EU legal documents related to the two cases are essential for the thesis to analyse. For the GDPR this is the official publication of the regulation in the Official Journal of the EU from 2016 when the regulation entered into force (OJ L 119, 4.5, 2016). Ideally, the equivalent publication for the AIA would also be used. However, since this regulation has not been formally adopted and therefore not published in the Official Journal (OJ), such a document does not exist at this time of writing. This thesis will therefore be examining the European Commission's proposal for this regulation from 2021 together with the Council of the EU's publication of the regulation from January 2024 (OJ, C 206, 2021; Council of the EU, 5662/24, 2024). Seen as the Council and the European Parliament reached a provisional agreement on the AIA in December 2023, the Council's document is one of the most recent and updated versions of the proposed regulation at the time of writing this thesis. Only legal acts published in the OJ are binding. Therefore, this thesis draws upon both the draft of the AIA from 2021 and the Council's document of

the final proposal of the AIA from January 2024. These documents, together with the legislation on the GDPR, are the main primary sources contributing to the explanation of the regulation. Other EU publications such as press releases will also be used to gain insight into the EU's intentions for the regulations. Secondary sources will be examined to gain insight into other perspectives on the wording of the regulations, different interpretations of the EU's intentions, the regulations' (possible) extraterritorial effects, and the presence of the EU's rights-driven approach. It is useful to see the regulations through other perspectives and hear different scholars' opinions for this thesis to make well-informed conclusions.

4.2 Comparative Case Study Approach

Gerring (2004) defines a case study as "*an intensive study of a single unit for the purpose of understanding a larger class of (similar) units*". Gerring believes it is wrong that the case study only investigates a single case because it always employs more than one case. A case study usually means that the study is qualitative, something section 4.1 has already explained. The case study approach is not known for having strict rules but is probably best understood as an ideal type (Gerring, 2004). However, the method does still have distinct characteristics: the type of inference, which can be descriptive or causal, the scope of the proposition, the degree of unit homogeneity found among cases and between the sample and the population, the sort of causal insight desired, the strategy of research, and the kind of empirical evidence available (Gerring, 2004). The descriptive approach in a case study is a common one. Questions asking *What?* and *How?* are easier to answer without recourse to cross-unit analysis than *Why?* questions (Gerring, 2004). Gerring further states that descriptive case study propositions are implicitly comparative, and these comparisons must have a cross-unit reference point (Gerring, 2004). Cases provided by single-unit studies are likely to be comparable to each other (Gerring, 2004).

As stated, the case study has often been referred to as a method that can only be applied to one case. The comparative method on the other hand can be applied to several cases, at least two, yet still relatively few cases compared to for example the statistical method (Ljiphart, 1971, p.691). Ljiphart (1971) defines the comparative method as one of the basic methods of establishing general empirical propositions (p.682). It is regarded as a method to discover empirical relationships among variables (Ljiphart, 1971, p.683). Similarly, Bartlett and Vavrus (2017) explain the comparative case study approach as an approach 'to discover'. They argue that comparative case studies need to consider two different logics of comparison: Identify specific units of analysis and compare them; and Processual logic which seeks to trace across individuals, groups, sites, and periods (Bartlett & Vavrus, 2017). This thesis will be using the former approach. When doing a comparative case study there is no rulebook or strict approach that one needs to follow. This approach is first and foremost a reminder of how much we might achieve through comparison (Bartlett & Vavrus, 2017).

Having explained the technicalities of the chosen method, this section now presents the thesis' two case studies and explains why they were selected and why it is important to compare them. The cases are two EU regulations, the GDPR and the AIA. They are both regulations within the technology sector and regulate how companies are allowed to handle customers' data, among other things. The AIA covers a larger area within the technology sector than the GDPR, but they do touch upon some of the same elements, making them similar in many ways. The decision to compare these regulations specifically is grounded

in the GDPR's track record combined with the AIA's potential. We know that the GDPR has a significant extraterritorial impact and that the AIA has the potential for a similar effect. Because both the GDPR and the AIA regulate the technology sector, and because both consumer data and AI systems have cross-border natures, they are similar enough that they are comparable. Their similarities make it relevant to compare the two regulations regarding how they exemplify the EU's rights-driven regulatory approach to see if they are similar in this regard as well. Looking into the AIA alone is difficult since the regulation is not yet formally adopted and hence, we do not know what impacts it will experience yet. It is however possible to compare the AIA to another regulation that we know has had an extraterritorial impact, and that we know bears evidence of the EU's rights-driven regulatory approach. In other words, the GDPR. By comparing the two regulations this thesis expects to find somewhat similar exemplifications of the EU's rights-driven regulatory approach and indications that the AIA can have an extraterritorial impact although not necessarily as extensive as that of the GDPR.

The comparative case study differs between a Most Similar System Design (MSSD) and a Most Different Systems Design (MDSD). The former is utilized when the chosen cases are as similar as possible, except for the phenomenon being assessed (Anckar, 2008). The latter is applied when the chosen cases are as different as possible while the phenomenon being researched is similar for all cases (Anckar, 2008). The GDPR and the AIA initially appear very similar, but so do the findings of this comparative study. In other words, this thesis has found that neither of these designs applies to this case study.

4.3 Limitations

The main limitation of this study relates to the case study selection. The available research material for the GDPR is final, the regulation is published in the Official Journal and enough years have passed to be able to see the effects of the regulation. This is not the case for the AIA. The available primary sources are not final, and this thesis must rely on proposals and other temporary documents for the regulations since it is yet to be published in the Official Journal. Due to this fact, the secondary sources in this field are naturally speculative as this thesis will also be. In other words, nothing is definite about the outcome of the AIA and thus no certain way for the thesis to draw definite conclusions on the extraterritorial effect of the AIA. This study will however conclude the first research question and make an educated prediction for the second question based on the comparison of the two regulations and other sources in the field. A final limitation of this study is that it is uncertain whether these findings will be valid three or eight years from now because this study's findings may not turn out to be correct. The next chapter is an exposition of the first case study, the GDPR, and its exemplification of the EU's rights-driven regulatory approach and the scope of its extraterritorial impact.

5 The General Data Protection Regulation

This chapter examines the European Union's (EU) regulation on Data Protection. Section 5.1 provides a short explanation of the regulation's background, and then accounts for what it entails. The following sections look at the regulation through that of the two concepts provided in chapter three. Section 5.2 investigates how the General Data Protection Regulation (GDPR) exemplifies the EU's rights-driven regulatory approach by connecting the legislation to the concept. Section 5.3 examines the scope of the GDPR's extraterritorial impact using the mechanisms of the Brussels Effect. This section also explains how the GDPR is a case of both the de facto and the de jure effects. Section 5.2 finds that the GDPR fits all characteristics of the concept of the EU's rights-driven regulatory approach. Section 5.3 finds that the regulation fulfils all five mechanisms of the Brussels Effect and has a significant extraterritorial impact found in both its de facto and de jure effects.

5.1 What Does the EU Regulation on Data Protection Entail?

In May 2016 the EU's data protection package that aims to make Europe fit for the digital age was adopted (European Commission, 2024a). The GDPR is part of this package and entered into force that same year. Two years later, in 2018, the regulation was put into effect (European Commission, 2024a). It is the most stringent privacy and security law in the world (GDPR: EU, 2024a). Data privacy in the EU can be traced back to 1950 when it was part of the European Convention on Human Rights. Article 8 of this convention states that *"Everyone has the right to respect for his private and family life, his home and his correspondence"* (ECHR, 1950, p. 11). The EU has since then sought to ensure the protection of this right through legislation (GDPR: EU, 2024a). In 1995 the EU passed the Data Protection Directive which in 2016 was replaced by the GDPR (EDPS, 2024). Since 1995, a time when the internet was in its infancy, technology has had an incredible development that has allowed tech companies to infringe more and more on personal information (EDPS, 2024). It has therefore been important to review the rules on data protection which in turn has led to the GDPR.

The GDPR protects EU citizens' right to data privacy by applying a set of detailed requirements for companies and organizations when collecting, storing, and managing personal data (Your Europe, 2022). This applies to European organizations that process the data of European citizens, companies based in the EU processing data outside the EU, and non-EU organizations that target people living in the EU (Your Europe, 2022). In other words, if an organization or company is either located in the EU or processes the data of individuals in the EU, the GDPR applies. In Article 4 of the GDPR personal data is defined as *"any information relating to an identified or identifiable natural person ('data subject')"* (Official Journal L 119, 4.5, Art.4, 2016). This entails information such as name, address, ID card/passport number, income, cultural profile, Internet Protocol (IP) address, or data held by a hospital or doctor (Your Europe, 2022). There are also categories of personal data that one cannot process. These are a person's racial or ethnic origin, sexual orientation, political opinions, religious or philosophical beliefs, trade union membership, genetic, biometric or health data except in specific cases, or personal data related to

criminal convictions and offences unless this is authorised by EU or national law (Your Europe, 2022).

In addition to these requirements and limitations, there is a set of rules for *when* data processing is allowed. The meaning of these data protection rules is to make sure actors process data fairly and lawfully for a legitimate purpose and to only process data when it is necessary to fulfil this purpose (Your Europe, 2022). In the regulation, there is a set of conditions that exemplify when one is allowed to process personal data. This is allowed when first, the individual concerned has consented; second, an actor requires it to fulfil a contractual obligation with the individual; third, to satisfy a legal obligation; fourth, to protect the vital interests of the individual; fifth, to carry out a task in the interest of the public; or, last, acting in a company's legitimate interests (Your Europe, 2022). The last condition is applicable if the individuals' fundamental rights and freedoms are not seriously impacted (Your Europe, 2022). In other words, to legally process personal data, one must fulfil one of these conditions. There are also specific rules concerning children. GDPR is making sure that parental consent is required for children when it comes to all sorts of personal data that are collected based on consent (Your Europe, 2022). These conditions are in turn also portraying some of the consumer rights that GDPR is intended to protect which this section will come back to in a bit.

Data protection by design and default is the core of the GDPR (Goddard, 2017). This is found in Article 25 of the GDPR (OJ L 119, 4.5, Art.25, 2016). By design means that a company should from the early stages take data processing into account when planning a new way of processing personal data (Your Europe, 2022). Data protection by default means that a company should always make the most privacy-friendly setting their default setting (Your Europe, 2022). In other words, all necessary technical and organizational steps to implement the data protection principles should be taken. The GDPR also has six general data protection principles: fairness and lawfulness; purpose limitation; data minimisation; accuracy; storage limitation; and integrity and confidentiality (Goddard, 2017). On the one side, this is supported by transparency and on the other side by accountability. By transparency, it is meant that full information is provided to individuals in an accessible style and manner (Goddard, 2017). Actors collecting personal data are required to inform individuals about who is processing their data and why (Your Europe, 2022). Accountability entails that all organizations take demonstrable responsibility for using personal data (Goddard, 2017).

Each company has the responsibility to make sure the personal data that is transferred outside of the EU is protected by the GDPR. To uphold EU law, they must take necessary measures to provide appropriate safeguards. If data is transferred to a non-EU country, companies must make sure this country has appropriate protections by EU standards in place (Your Europe, 2022). Or the company can rely on specific grounds for the transfer (derogations) such as the consent of the individual (Your Europe, 2022). If corporations fail to comply with the GDPR, the EU has implemented administrative fines for non-compliance. According to Article 83, infringements of the GDPR's provisions shall be subjected to administrative fines of up to €20 million (OJ L 119, 4.5, Art.83, 2016). In the case of an undertaking however, the fine is up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher (OJ L 119, 4.5, Art.83, 2016). Additionally, Article 84 states that Member States should impose penalties for infringements of the GDPR that are not subjected to the fines in Article 83 (OJ L 119, 4.5, Art.84, 2016).

5.2 A Rights-Driven Approach to Regulating Data Collection and Processing

Article 1 of the GDPR states that “*This regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data*” (OJ L 119, 4.5, Art.1, 2016). Looking at the different chapters of the regulation and the general content, this does seem to be the case. Especially when looking at chapter three, “Rights of the data subject” which is a collection of the multiple rights of EU citizens and their data (OJ L 119, 4.5, 2016). This section utilizes the characteristics of the EU’s rights-driven regulatory approach to investigate how the GDPR exemplifies this approach. First, does it have a clear focus on fundamental rights and connection to the Charter? Second, does it allow government intervention? Third, does it strengthen and improve the rights of EU citizens as enshrined in the Charter? Fourth, does it restrict any fundamental rights in favour of better protecting the rights they are specifically meant to protect?

Li, Yu and He (2019) state that the GDPR has strengthened the EU’s data protection to meet the new privacy challenges we now face due to the development of digital technologies (Li, Yu, & He, 2019). Consumers have thus gained a high degree of control over their data and how it is being processed. Ke and Sudhir (2023) point out that the GDPR recognizes that it is the individuals themselves who own and control their data in perpetuity (Ke & Sudhir, 2023). Further, they state that this has led to three critical privacy rights: the rights to explicit consent (data opt-in), to be forgotten (data erasure), and portability (data transfer) (Ke & Sudhir, 2023). The approach of the GDPR to protect fundamental rights seems to be twofold. On the one hand, it pushes this aspiration by providing specific rights meant to protect the data subject. At the same time, it regulates how and when the controllers and processors are allowed to process personal data. With this combination of approaches, the EU is fulfilling their goal for the GDPR as stated in Article 1.

Li, Yu and He (2019) mention the right to withdraw consent (Art.7) and the right to be forgotten (Art.17) as the main elements of how consumers have gained more control due to the GDPR. Article 7 explains that an individual’s consent is not binding and has the right to withdraw their consent at any time (OJ L 119, 4.5, Art.7, 2016). The right to erasure – right to be forgotten – in Article 17 explains that the data subject has the right to ask the controller to erase their data (OJ L 119, 4.5, Art.17, 2016). The data subject can do this in several scenarios, e.g. if the data is no longer necessary concerning the relevant purposes of its collection or if the data subject withdraws consent. The GDPR also ensures several other rights of the data subject. Individuals have the right to correct and the right to object which is explained in Articles 16 and 21 (OJ L 119, 4.5, 2016). The right to access is covered in Article 15 and gives individuals the right to know whether their data is being processed, access to this data, the purpose behind the processing, how long it will be stored, and the right to a copy of the processed data (OJ L 119, 4.5, Art.15, 2016). According to Article 20, if the processing is based on a contract or consent, the individual has the right to have this data transferred to another company and can also ask for their data to be returned (OJ L 119, 4.5, Art.20 2016; Your Europe, 2022).

The GDPR has led to higher requirements for data controllers and processors through its articles (Li, Yu, & He, 2019). Article 24 on the responsibility of the controller states that the controller must ensure and be able to demonstrate that the processing they do is

performed following the regulation (OJ L 119, 4.5, Art.24, 2016). There is also Article 25 as previously mentioned, on data protection by design and default. This entails that a company should always consider data processing when planning new ways of processing personal data and always make the most privacy-friendly setting their default setting. Article 30 on records of processing activities is also important, entailing that the controller must maintain a record of processing activities under its responsibility (OJ L 119, 4.5, Art.30, 2016). Here, they need to provide information on the controller, the purpose of processing, categories of data subjects and personal data, recipients in third countries or international organizations, and the envisaged time limits for erasure of the different categories of data (OJ L 119, 4.5, Art.30, 2016). Overall, the GDPR ensures that individuals have ownership and control of their own data, as explained above. Controllers and processors have a list of requirements they are obligated to follow. The GDPR provides EU citizens with more power and control in this new digital age and simultaneously holds the controllers and processors accountable.

Bradford (2023) states that the right to privacy is closely related to human dignity, which the EU Charter considers inviolable (Bradford, 2023, p.111). In the Charter, the EU guarantees individuals the right to privacy and the right to protection of their data (Bradford, 2023, p.112). The GDPR is in other words a set of more detailed privacy protections that are in addition to the constitutional protections in the Charter (Bradford, 2023, p.112). The Charter's Article 8 on the protection of personal data also corresponds with the GDPR. It reads that: "*Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law*" (OJ C 326, 26.10, 2012). The connection can be seen in conjunction with the GDPR's Articles 30 and 7 especially. These articles cover controllers' need to record all processing activities, and the rules involving the data subjects' consent and related rights. Further, Article 8 of the Charter states: "*Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified*" (OJ C 326, 26.10, 2012). This has a clear connection to Articles 15 and 17 of the GDPR. These cover the right to access and knowledge on if and what personal data is being processed, and the right to have their data erased. Hence, it is evident that there is a clear connection between the Charter and the GDPR.

Article 7 of the Charter expresses that everyone has the right to respect for their private and family life, home, and communication (OJ C 326, 26.10, 2012). This is a fundamental right the GDPR protects through both its articles ensuring that individuals have more control of their data and through the requirements for controllers and processors. At the same time, the Charter's Article 11 states that everyone has the right to freedom of expression (OJ C 326, 26.10, 2012). This includes the freedom to receive and impart information and ideas without interference by public authority (OJ C 326, 26.10, 2012). In other words, the GDPR goes against the Charter's Article 11 to provide sufficient protection of its Articles 7 and 8. This is another characteristic of the rights-driven regulatory approach. The GDPR ensures individuals control over their data and privacy at the cost of some interference with Article 11 of the Charter to ensure this.

In summary, the GDPR has solidified the points in the Charter on personal data and taken it further by making the strict regulation. The first characteristic of the EU's rights-driven approach is how the Union's rules are drafted specifically to reflect European values. By the obvious connection between the Charter and the GDPR, it is evident that this is the case. The second characteristic is the EU's belief that the government should regulate tech companies and how it justifies government intervention in the name of safeguarding

individual rights. The fact that the GDPR entails more stringent requirements for data controllers and processors underlines that the EU believes that the government should regulate the market to better protect individuals as the concept of the rights-driven approach claims. Companies would not implement such stringent regulations for themselves without it being obligatory and non-compliance resulting in consequences, and the EU knows it. The GDPR has also proven to strengthen and improve citizens' rights towards both tech companies and the state which is the third characteristic of the concept. Finally, the GDPR partially restricts the freedom to receive and impart information without interference by public authority. This restriction of the Charter's Article 11 in favour of better protecting the right to privacy and data protection in Articles 7 and 8 is in accordance with the fourth characteristic. Considering these findings, it is reasonable to argue that the GDPR is a case of the EU's rights-driven approach. With the GDPR the rights of individual data subjects are being expanded and better solidified. The extensive regulatory framework provides concrete direction and laws for controllers and processors to follow, effectively protecting EU citizens' fundamental right to the protection of their personal data.

5.3 The Global Gold Standard on Data Protection

The GDPR has already proven to have an extraterritorial impact, one that is quite extensive and impressive in scope. The EU's data protection laws have long been regarded by the world as a gold standard (EDPS, 2024). Article 3 of the GDPR states that the regulation not only applies to controllers and processors in the EU but also to those outside the Union that process the personal data of individuals in the Union (OJ L 119, Art.3, 4.5.2016). No matter where a company is based or where it stores data, if it processes the personal data of EU citizens, they are within the scope of the GDPR (Tankard, 2016). Due to this, the regulation has gained quite an outward reach beyond EU borders because everyone exporting relevant products or services to the EU must comply with the GDPR. This section explores the scope of the GDPR's extraterritorial impact by examining how the regulation fulfils the mechanisms of the Brussels Effect. These mechanisms are market size, regulatory capacity, stringent standards, inelastic targets, and non-divisibility. This section will also discuss how the GDPR has experienced both a de facto and de jure effects.

According to the concept of the Brussels Effect, considerable market size and the markets' attractiveness are one of five mechanisms needed for the GDPR to be globalized. The EU is the second-largest economy in the world, the second-largest importer of goods, and the largest importer of services (Bradford, 2020, p. 27). In other words, the EU market is of significant size. Being the biggest importer of goods is favourable for EU regulations in experiencing an extraterritorial impact because the regulation applies to all actors providing goods or services to the EU or processing EU citizens' personal data. For companies to offer their products to the European market they must comply with EU rules, and because this is a large, attractive market, they are likely to comply to gain access (Bradford, 2023, p.324). However, a large, attractive market alone is not enough for the GDPR to have an extraterritorial impact. The EU must make a conscious effort to be a regulatory power. This entails having the regulatory capacity to promulgate and enforce regulations, in this case, the GDPR (Bradford, 2020, p.31). The EU does this by imposing sanctions for non-compliance with the regulation as explained in section 5.1. For the GDPR, the EU has imposed administrative fines for controllers and processors up to €20 million. The fact that the EU not only makes a data protection regulation but also has the authority

and means to follow up on it is an important factor in whether the GDPR has an extraterritorial impact or not.

Another mechanism of the Brussels Effect is stringent standards. As we know, the GDPR is the world's most stringent privacy and security law in the world, making it a very stringent standard indeed. This is evident in how the GDPR sets high requirements for data controllers and processors which is especially evident in Articles 24, 25, and 30 explained in section 5.2. Usually, it is wealthier countries that can adopt strict rules for their market because stringent regulations can sometimes be at the expense of the profitability of a country's firms. For example, the EU's approach to regulating the digital economy has been criticized by industry advocates and companies from both inside and outside the EU market. They argue that the EU's protective regulations compromise tech companies' incentives to innovate (Bradford, 2023, p.10). This is also argued to be the reason why few tech giants emerge from Europe (Bradford, 2023, p.10). The counterargument is that strict regulations are needed to protect the fundamental rights of EU citizens, as explained in the previous section.

It is not strange that the GDPR has had such an extensive extraterritorial impact considering this digital era we live in. The digital economy is of a cross-border nature and internet systems collect and process data to feed its algorithms. The GDPR not only apply to outside controllers that offer physical goods or services to the Union, but simply if an individual in the EU visits a non-EU website and the website uses tools to track cookies or IP addresses then it must adhere to the GDPR (GDPR: EU, 2024b). This is another characteristic of the Brussels Effect – inelastic targets. Inelastic targets mean when products or producers are tied to a certain regulatory regime and hence non-responsive to regulatory change (Bradford, 2020, p.48). Consumer markets have an inelastic nature and therefore the location of the consumer, in this case, the EU citizen, determines what regulation to follow (Bradford, 2020, p.48). It does not matter that the product or service comes from outside the EU, if these apply to a consumer within the EU market the manufacturer must comply with the GDPR. Because the EU is a large and attractive market, the manufacturer is likely to comply to access it.

These mechanisms all build upon each other and are closely connected. The final mechanism needed for the GDPR to be a global standard is non-divisibility. EU standards become global standards only when the benefits of adhering to a single regulatory standard surpass the benefits the advantages of a laxer standard in other markets (Bradford, 2023, p.327). The EU is a huge market which makes access very attractive and not having access would be bad for business. However, adhering to several different regulatory standards for different markets around the world is neither productive nor cost-effective. Many tech companies instead choose the most stringent standard on the market, which in this case is the GDPR (Bradford, 2023, p. 325). Companies thus ensure regulatory compliance worldwide as well as uniformity (Bradford, 2023, p. 325). Because the EU is known for its stringent regulations across different markets, it is not unusual that these become global standards due to this effect. Reputation and brand-building are other reasons why tech companies choose to make the GDPR their single regulatory standard (Bradford, 2023, p. 330). As the EU is known for its European values and following a rights-driven regulatory model focusing on fundamental rights, it is popular for a non-EU company to adhere to the GDPR as it looks good to be protecting its customers (Bradford, 2023, p. 330).

Essentially, the GDPR does have the mechanisms in place for the regulation to have an extraterritorial impact according to the concept of the Brussels Effect. This is not surprising

as its significant global impact is well-known and documented. Further, the concept differs between the 'de facto' and the 'de jure' Brussels Effect. In this case, the former refers to when global corporations respond to the GDPR by adjusting their global conduct to conform to the regulation. The latter is when foreign governments adopt regulations that are similar to the GDPR, usually as the result of a de facto effect. The GDPR's extraterritorial impact happens to include both effects. After entering law in 2016, it did not take long before the GDPR was embraced as a global privacy standard by leading American tech firms such as Meta, Google, Apple, and Microsoft (Bradford, 2023, p.324). The GDPR's impact on American and Chinese companies has been especially significant. Both the United States (US) and China are two of the leading global economic powers and therefore naturally have many companies doing business with the large EU market (Li, Yu, & He, 2019). Li, Yu and He wrote in their article in 2019 that 68% of American companies were expected to spend between \$1 million and \$10 million to meet GDPR requirements, and that 9% were expected to spend more than \$10 million (Li, Yu, & He, 2019).

The GDPR does demand that controllers and processors comply with the regulation if they process the personal data of individuals in the EU. But it does not, and cannot, demand that non-EU actors make the GDPR their company's regulatory standard for data privacy. A combination of the EU's market size and attractiveness, its regulatory capacity, stringent standards, inelastic targets, and non-divisibility is what has made this happen. In 2023 nearly 150 countries had adopted domestic privacy laws where the majority resembled the EU data protection regime (Bradford, 2023, p.325). It has served as a blueprint for similar regulations on privacy in, among others, California, Vermont, Brazil, Bali, India, Chile, and New Zealand (Aridor, Che, & Salz, 2020). The de jure Brussels Effect is often built directly upon the de facto Brussels Effect and is usually a result of multinational companies lobbying for EU-style regulations in their home jurisdictions (Bradford, 2023, p.332). An example of this is large American tech companies such as Apple and Meta becoming advocates of similar regulations to the GDPR in their home markets (Bradford, 2023, p.333). Even China has adopted a privacy law where many aspects closely resemble the GDPR (Bradford, 2023, p.334).

The regulation has been in play for several years and by now it has become evident that it has a spectacular extraterritorial impact. In other words, its impact is no longer a surprise, but something we know for a fact. The GDPR fulfils the five mechanisms of the concept of the Brussels Effect and has proven to have both de facto and de jure effects. This is evident through the knowledge that it has impacted global corporations to adhere to the GDPR and several foreign governments have adopted privacy protection standards similar to the EU regulation. The GDPR is all over a prime example of an EU regulation in the technology sector having an extraterritorial impact.

5.4 Conclusions

To summarize, this chapter has partly answered both main research questions. Section 5.2 discussed how and to what extent the GDPR exemplifies the EU's rights-driven regulatory approach and section 5.3 discussed what the scope of the GDPR's extraterritorial impact is. The regulation does exemplify the characteristics of the concept of the EU's rights-driven regulatory approach. The GDPR's articles have an obvious connection to the Charter, the regulation allows government intervention, it strengthens and improves citizens' rights, and it slightly compromises the Charter's Article 11 in favour of Articles 7 and 8. In other words, the GDPR is a solid exemplification of this approach. These revelations are

somewhat surprising as it was not expected that the GDPR would be such a solid exemplification of this concept. The scope of the GDPR's extraterritorial impact is significant. All five mechanisms of the Brussels Effect are fulfilled, and it is evident that it has experienced both de facto and de jure effects. The findings on the GDPR's extraterritorial impact are not surprising as it is well known that the GDPR has had an extraterritorial impact. It is however interesting to have done an in-depth investigation of its scope and found out how well it fits the characteristics of the concept of the Brussels Effect. These findings lay the groundwork for the comparison of the GDPR and the AIA that will be examined in chapter seven. Before that, a similar investigation of the AIA's exemplification of the EU's rights-driven regulatory approach and its possible extraterritorial impact will be discussed in the next chapter, chapter six.

6 The Artificial Intelligence Act

This chapter examines the upcoming EU regulation on Artificial Intelligence (AI). Section 6.1 provides background information on the Artificial Intelligence Act (AIA) and on what the regulation will entail. The following sections look at the regulation through the two concepts provided in chapter three. Section 6.2 investigates how the AIA exemplifies the EU's rights-driven regulatory approach by connecting the legislation to the conceptual framework. Section 6.3 investigates what extraterritorial impact can be expected for the AIA. It applies the mechanisms needed for the Brussels Effect to materialise and the concept's categorization of the two kinds of Brussels Effect, the de facto and de jure effects. Finally, section 6.2 finds that the AIA clearly exemplifies the EU's rights-driven approach. Section 6.3 finds that even though it is impossible to know the extent of the AIA's extraterritorial impact for certain, the thesis expects that the AIA is very likely to have a significant de facto Brussels Effect and that it is also probable to experience some extent of a de jure effect.

6.1 What Will the Upcoming Regulation on Artificial Intelligence Entail?

The EU's regulation on AI, the EU AI Act (AIA), will become the world's first rules on AI (European Parliament, 2023b). Back in 2019, the High-Level Expert Group on AI presented Ethics Guidelines for Trustworthy AI (European Commission, 2024c). These guidelines are said to have paved the way for the proposed AI Act (Bradford, p.115). Then, the Commission's White Paper on AI from 2020 and the Ethics Guidelines stressed the importance of a human-centric AI that respects individuals' rights and preserves their human dignity while also improving their lives (Bradford, p.115). In 2021 the Commission finally presented its proposal for regulations on harmonized rules for AI in the EU (Bradford, p.114). Since then, the European Parliament (EP) and the Council of the EU have proposed their changes and worked on getting closer to a final draft of the legislation. From June to December of 2023 the final phase of negotiations took place in the so-called trilogue meetings (European Parliament, 2024a). This phase consisted of discussions and negotiations between the Commission, Parliament, and Council regarding the AIA. Finally, on 8 December 2023, the Parliament and the Council reached a provisional agreement (European Parliament, 2023a). The next steps will be for both the Parliament and the Council to formally adopt the text to become EU law (European Parliament, 2023a). On 13 March 2024, the Parliament endorsed the AI Act (European Parliament, 2024a). Eventually, the AIA will be published in the Official Journal, and will be fully applicable 24 months after it enters into force (European Parliament, 2024b).

In the Council's publication of their compromise with the Parliament on the AIA, Article 1 states that "*The purpose of this Regulation is to improve the functioning of the internal market and promoting the uptake of human-centric and trustworthy artificial intelligence [...]*" (Council of the EU, 5662/24, Art.1, 2024, p.93). At the same time, it aims to provide a high level of protection of health, safety, and fundamental rights such as democracy, rule of law, and environmental protection against harmful effects of AI systems in the

Union (Council of the EU, 5662/24, Art.1, 2024, p.93). When fundamental rights are mentioned, they are referred to as enshrined in the Charter of Fundamental Rights of the EU. Additionally, the EU intends for the AIA to promote investment and innovation in AI within the Union (Consilium, 2024). An 'AI system' is defined in Article 3 as “*machine-based system designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments;*” (Council of the EU, 5662/24, Art.3, 2024, p. 97).

There are several benefits to the use and development of AI, such as better healthcare; safer and cleaner transport; more efficient manufacturing; and cheaper and more sustainable energy (European Parliament, 2023b). However, in contrast, AI can also impose various levels of risk to the users of some AI systems. AI can be used for manipulating information and human behaviour and for control practices such as real-time facial recognition and surveillance (Bradford, 2023, p.115). The AIA is in other words measures taken to protect EU citizens from these risks while still supporting innovation. Thus, the EU has decided to make the AI regulation risk-based. The main reason for this is so that AI systems that are not posing any serious fundamental rights violations or other significant risks are captured (Consilium, 2023). This way different AI systems will be regulated accordingly, and this will in turn prevent it from inhibiting innovation. This way of regulating provides for a horizontal layer of protection (Consilium, 2023). Table 5 provides a visual of the different risk levels, what regulatory approach each entails, and examples of what activities display what level of risk.

Table 5: Risk-based approach to regulating Artificial Intelligence in the EU

| | Minimal or no risk | Limited risk | High risk | Unacceptable risk |
|---|---|---|---|--|
| Regulatory approach for the different risk levels | AI systems can continue to be used and will not be regulated or affected by the AIA. | AI systems will be subjected to very light transparency obligations. | AI systems will be subject to a set of requirements and obligations for gaining access to the EU market. | AI systems will be banned from use in the EU. |
| Examples of related AI systems | Video games, spam filters | Chatbots | Use in transport, for marketing exams, recruitment, granting of loans | Social scoring, facial recognition |

Source: Author’s own compilation based on information from the official website of the Council of the EU and the European Council (Consilium, 2024).

The risk-based approach divides risks into four categories: minimal or no risk, limited risks, high risks, and unacceptable risks. Most AI systems do not pose any risks and therefore do not need to be regulated. The possible damage of the higher risk level systems on the other hand can be very unfortunate and the need for rules is thus evident. AI systems that pose limited risks will have to follow very light transparency obligations. Examples of this would be disclosed if their content has been AI-generated as it will help users make

informed decisions concerning future use (Consilium, 2024). AI systems that pose high risks and are authorized by the EU will have to comply with a set of requirements and obligations to be allowed access to the EU market (Consilium, 2024). Finally, unacceptable risks include the use of AI which is deemed unacceptable and will therefore not be allowed in the EU market, with a few exceptions (Consilium, 2024). These uses include cognitive behavioural manipulation, predictive policing, emotion recognition in the workplace and educational institutions, and social scoring (Consilium, 2024). So-called remote biometric identification systems, like facial recognition, will also be banned except for some limited cases (Consilium, 2024).

However, there are exceptions to what or where the AI Act applies. The regulation does not apply to areas outside the scope of EU law, and it should not affect member states' competencies in national security (Council of the EU, 5662/24, Art.2(3), 2024, p. 94). Systems that are exclusively for military or defence purposes are also exceptions. Other exceptions are if AI systems are used solely for research and innovation or if used for non-professional reasons (Consilium, 2023). There are also exceptions for vital work within law enforcement. If any of the AI systems do not comply with the requirements of the AI Act, the EU can impose fines. This is covered in Article 71, 'Penalties'. In cases of non-compliance, actors can be subjected to administrative fines of up to €35 million (Council of the EU, 5662/24, 2024). If the offender is a company, they can be subjected to be fined up to 7% of its worldwide annual turnover for the proceeding financial year if higher than the alternative fine (Council of the EU, 5662/24, 2024).

6.2 A Rights-Driven Approach to Regulating Artificial Intelligence

Article 1 in the AIA, according to the Council's publication from January 2024, explains that it will perform its purpose "[...] while ensuring a high level of protection of health, safety, fundamental rights enshrined in the Charter [...] against harmful effects of artificial intelligence systems in the Union and supporting innovation" (Council of the EU, 5662/24, Art. 1, 2024, p-93). The AIA specifically mentions the Charter of Fundamental Rights of the EU in its introductory article. This section investigates how the AI Act exemplifies the EU's rights-driven regulatory approach by examining how the characteristics of the concept fit the regulation. First, does it have a clear focus on fundamental rights and connection to the Charter? Second, does it allow government intervention? Third, does it strengthen and improve the rights of EU citizens as enshrined in the Charter? Fourth, does it restrict any fundamental rights in favour of better protecting the rights they are specifically meant to protect? Because the AIA is not formally adopted and therefore not published in the Official Journal, this thesis examines the European Commission's proposal from 2021 together with the Council of the EU's publication of the regulation from January 2024 (OJ, C 206, 2021; Council of the EU, 5662/24, 2024).

The EU has presented the AIA as a regulation whose objectives are to prevent bias, discrimination, and unfair treatment in AI systems (Bosoer, Cantero Gamito & Rubio-Marin, 2023). AI is characterized by opacity, complexity, dependency on data, and autonomous behaviour which can affect several fundamental rights as enshrined in the Charter (OJ C 206, 2021). It is therefore stated that the AIA seeks to ensure a high level of protection for these rights (OJ C 206, 2021). As already accounted for, AI systems within the category of unacceptable risk will be banned from use in the EU. These systems are a contradiction to the EU's commitment to fundamental rights, such as the right to non-discrimination and

data privacy (Bradford, 2023, p.115). AI systems in the category 'high-risk' are allowed in the EU market but will be strictly regulated to protect individuals' rights.

The Explanatory Memorandum of the AIA proposal from 2021, in section 3.5, explains that the AIA aims to ensure a high level of protection of the fundamental rights in the Charter (OJ C 206, 2021). It is further expressed that "*With a set of requirements for trustworthy AI and proportionate obligations on all value chain participants, the proposal will enhance and promote the protection of the rights protected by the Charter*" (OJ C 206, 2021). In other words, the Commission's proposal is clearly referencing the Charter and focuses on protecting fundamental rights. It does not however directly reference the Charter in the articles themselves, just in the explanatory memorandum. The Council's document from 2024 on the other hand references the Charter in Article 1, as presented in the introduction. Fundamental rights are referred to significantly more in both documents. In other words, there seems to be an evident connection between both AIA proposal documents and the Charter and a clear focus on protecting fundamental rights.

The proposal from 2021 explains that several of the fundamental rights enshrined in the Charter will be protected by this regulation. These include the right to human dignity (Article 1), respect for private life and protection of personal data (Articles 7 & 8), non-discrimination (Article 21) and equality between women and men (Article 23) (OJ C 206, 2021). Further, it claims that the AIA will have a positive effect on several special groups' rights. Among these are the worker's rights to fair and just working conditions (Article 31), a high level of consumer protection (Article 38), the rights of the child (Article 24), and the integration of persons with disabilities (Article 26) (OJ C 206, 2021). It wants to mitigate any potential negative impact on the rights to freedom of expression (Article 11) and freedom of assembly (Article 12) as well as protect the rights to effective remedy, fair trial, and the rights of defence (Article 47 & 48) (OJ C 206, 2021). Although the proposal does not actively refer to the Charter in its articles, one can however see how the proposed regulations on AI will help protect these rights enshrined in the Charter.

Article 5 on prohibited AI practices, in both the 2021 proposal and the Council's document from 2024, provides a set of obligations for actors who put AI systems on the market or into service. Some of these obligations entail ensuring compliance with relevant data protection legislation, namely the GDPR (Council of the EU, 5662/24, Art. 5, 2024, p.109). In other words, we see that the AIA seek to cover one of the fundamental rights of the Charter, the right to protection of personal data (OJ C 326, Art. 8, 26.10, 2012). Article 5 also tackles the use of 'real-time' remote biometric identification systems for use in law enforcement. These systems are generally banned from the EU market, characterized by the risk level 'unacceptable', but in some cases of law enforcement, it has been exempted (Council of the EU, 5662/24, Art. 5, 2024, p.108). When such systems, e.g. facial recognition, are used in publicly accessible spaces it violates the fundamental right to privacy and the right to protection of personal data (Bradford, 2023, p.114). The AIA is also providing consumer protection. The focus on regulating high-risk AI systems is a way of doing this since these systems are likely to impact consumers. Article 6 specifies that a system is considered high-risk if it poses a significant risk of harm to the health, safety, or fundamental rights of natural persons (Council of the EU, 5662/24, Art. 6, 2024, p.111).

The AIA's articles 9 to 15 consist of requirements for high-risk AI systems, and Article 8 demands that systems categorized as such shall comply with these requirements (Council of the EU, 5662/24, Art. 8, 2024, p.115). They include risk management systems (Article 9), data and data governance (Article 10), technical documentation (Article 11), record-

keeping (Article 12), transparency and provision of information to deployers (Article 13), human oversight (Article 14), and accuracy, robustness, and cybersecurity (Article 15) (Council of the EU, 5662/24, 2024, p.116-126). For example, Article 10 states that the practice of training, validation and testing data sets shall concern examination given possible biases that are likely to negatively impact fundamental rights and prevent and mitigate these (Council of the EU, 5662/24, Art. 10, 2024, p.118-119). Thus, effectively assessing, and mitigating discrimination risks and protecting the right to non-discrimination. Article 13 on transparency obligations helps ensure that AI systems' operation is transparent and that these systems are accompanied by instructions for use (Council of the EU, 5662/24, Art.13, 2024, p.122). Article 52 adds to this by stating that AI systems meant to directly interact with natural persons must be designed and developed so that the user knows they are interacting with an AI system (Council of the EU, 5662/24, Art.52, 2024, p.164). These transparency rules help the consumer make informed decisions and prevent AI systems from being used to manipulate or censor content, something that would infringe the right to freedom of expression.

In addition to providing requirements the AIA also present a list of obligations of providers and users of high-risk AI systems. Article 16 states that providers of high-risk systems shall comply with the requirements presented in other articles, such as having their documentation in order, complying with registration obligations, and their systems undergoing the relevant conformity assessment procedure before being on the market (Council of the EU, 5662/24, Art.16, 2024, p.127). All measures taken to make AI systems in the European market safe consider citizens' fundamental rights. However, there are a couple of fundamental rights in the Charter that the AI Act imposes some restrictions on. The Charter's Article 16, the right to conduct business, and Article 13, the right to freedom of art and science (OJ C 206, 2021). This is necessary to protect other public interests such as health, safety, consumer protection, and other fundamental rights. In other words, these restrictions are sometimes necessary, and they will only be imposed to the extent that is needed to prevent mitigating serious safety risks and likely infringements of fundamental rights (OJ C 206, 2021).

Not only does the proposal of the AIA refer to the fundamental rights of the Charter in its explanatory memorandum and Article 1, but it is also exemplified in the articles. There is thus no doubt that the AIA proposal reflects the values expressed in the Charter, one of the characteristics of the EU's rights-driven approach. The AIA is an extensive proposal, aiming to regulate a set of different areas due to AI impacting the market in many ways. The belief that the government – here, the EU – should be the one to regulate the market to protect individuals' fundamental rights is also evident for the AIA. This is especially visible in Articles 16 to 29 on the obligations of providers and users of high-risk AI systems. The EU has thus put a set of requirements and obligations on the providers of AI systems to make sure that EU citizens' rights are being protected. To summarize, it is evident that the AIA aims to strengthen and improve the rights of citizens, corresponding with what the rights-driven approach aims to do. At the same time, the AIA also aligns with the concept of the EU' rights-driven approach when it comes to being willing to balance the right to different freedoms of expression to protect other fundamental rights such as human dignity or the right to privacy. Overall, the AIA fits all four characteristics of the concept of the EU's rights-driven regulatory approach.

6.3 Setting a Global Standard for Artificial Intelligence?

As we know, the AIA has not yet been formally adopted into law, but soon will. Because of this, it is not possible to know yet what kind of extraterritorial impact the regulation will have. However, based on the proposal from 2021 and the Council's publication from January this year, this thesis tries to make some assumptions using the mechanisms needed for the Brussels Effect to occur and what kind of effect, de facto or de jure, is likely. This section starts by examining how the AIA addresses the scope of the regulation and how it currently fulfils the criteria of the Brussels Effect. Lastly, it reflects upon different scholar's opinions on the matter and from there concludes what kind of extraterritorial impact the AIA can be likely to experience after adoption.

Article 2 of the AIA accounts for its scope. It states that the regulation applies to providers of AI systems or actors placing such systems on the EU market regardless of whether they are located in the Union or a third country (Council of the EU, 5662/24, Art.2, 2024, p.94). This means that non-EU actors are bound to be affected by the AI Act. This makes it reasonable to assume that the AIA will at least have some degree of an extraterritorial impact. But does the Act have all the mechanisms in place for a Brussels Effect to materialize: market size, regulatory capacity, stringent standards, inelastic targets, and non-divisibility?

Market size is the first mechanism needed for the AIA to have an extraterritorial impact. When accounting for the scope of the GDPR's extraterritorial impact it was established that the EU market has the size and attractiveness needed for the Brussels Effect to materialize. Naturally, this has not changed now that we are looking at another regulation. Regarding regulatory capacity, the second mechanism, and the EU having the means to promulgate and enforce regulations, the AIA does include sanctions for non-compliance. Article 71 states that administrative fines of up to €35 million can be the consequence of not complying with the EU's rules on AI (Council of the EU, 5662/24, 2024). In other words, the EU does have the means to enforce the rules of the AIA, not only for EU actors but also those located in third countries affecting EU citizens according to Article 2.

The mechanism of stringent standards is also visible in the AIA. It will be the world's first rules on AI which automatically will also make it the world's strictest standard. However, even without this fact, the AIA is a very strict regulation and sets a high standard for regulating AI. Not only does it regulate limited-risk and high-risk AI systems, but it also bans unacceptable risk systems from the EU market. As previously stated, strict regulations tend to restrain innovation by compromising companies' incentives to do so. The EU however has been adamant that the AIA shall both protect fundamental rights and boost innovation (European Parliament, 2023a). Presenting such a strict regulation on AI also portrays the EU's belief that tech companies need to be regulated to protect the individuals' fundamental rights as is one of the characteristics of the EU's rights-driven regulatory approach.

Consumer markets are inelastic, meaning EU citizens are tied to the EU market and consequently EU law. This means that when a non-EU producer of an AI system wants to provide their product to EU consumers, they must comply with the AIA to access the market. The inelastic nature of the consumer market ensures compliance from non-EU producers because they cannot move their 'targets' – the consumers – from the EU jurisdiction. The AIA does in other words comply with this mechanism of the Brussels Effect. For the regulation to become a global standard, however, the regulation also needs to encourage non-divisibility. According to the concept of the Brussels Effect, a regulation

only becomes a global standard when global corporations voluntarily choose to comply with the most stringent regulation for their global operations. Because the AIA is not yet formally adopted it is difficult to know for certain if this mechanism will be fulfilled or not. Although, the reasons for cost efficiency and being branded as a protector of people's rights might sway producers into making the AIA the standard for their global conduct. It is more effective and economical for a company to produce all AI systems to be the same instead of creating different systems for different markets. Because the EU is known for its focus on fundamental rights and how this is oftentimes reflected in its regulations, complying with the AIA can also provide a positive reputation for producers also to consumers outside the EU.

It seems likely that the AIA will fulfil all mechanisms of the Brussels Effect and thus experience an extraterritorial impact and possibly become a global standard. Non-EU actors providing AI systems to the European consumer must make changes to their products to access the attractive EU market. If they do not comply with the AIA, the EU can enforce sanctions. The European consumer being an inelastic target also prevents providers from avoiding the regulation seeing as they cannot, or will not, miss out on the market access. Assuming these mechanisms are in place, providers of AI systems may find it expensive and/or ineffective to provide different systems for different markets. Thus, it is probable they will decide to follow the most stringent regulation – the AIA – for all their products globally. In this scenario, the AIA would have all the mechanisms of the Brussels Effect in place.

Several scholars predict the AIA will have, or most likely have, an extraterritorial impact, something this thesis also agrees with (Engler, 2022; Gstrein, 2022; Helberger & Diakopoulos, 2023; Meltzer & Tielemans, 2022; Siegmann & Anderljung, 2022; Thelisson & Verma, 2024). We already know that the AIA fulfils most of the mechanisms of the Brussels Effect and is likely to fulfil all once it is put into force. This alone makes it probable for the regulation to experience an extraterritorial impact. Further, the cross-border nature of the harm caused by AI makes it an international issue and not simply a domestic one (Li, Schütte, & Sankari, 2023). Because providers of AI systems must conduct conformity assessments for high-risk AI to enter the EU market, the AIA may contribute to the development of a global consensus on AI trustworthiness (Thelisson & Verma, 2024). Further, this means that the AIA also has the potential to export European values abroad (Thelisson & Verma, 2024).

Not only is the AIA likely to have an extraterritorial effect by applying to non-EU actors that provide AI systems to the Union, but also by possibly affecting international cooperation on AI (Meltzer & Tielemans, 2022). However, it is not just the AIA's nature that feeds these speculations and assumptions. The EU emphasises its intent for the AIA to function as a new global standard (Meltzer & Tielemans, 2022). The President of the Commission, Ursula von der Leyen, said in a statement on 9 December 2023 that the AIA will make a substantial contribution to the development of global guardrails for trustworthy AI (European Commission, 2023b). There are also references for a race to regulate AI and to set a worldwide standard (Engler, 2022; Li, et.al., 2023; Smuha, 2021). The belief is that by being among the first major regulatory powers to create an extensive regulation on AI there are high chances of it having a global impact. This thesis agrees that by being the first to set such a stringent standard for AI, the EU is likely for its regulation to have an impact on the rest of the world. Li et.al (2023) state that the Brussels Effect is no longer an occasional incident, but something that EU regulators are actively pursuing.

On the other hand, the AIA can also create barriers to international cooperation on AI and create costs to AI development in Europe by diverging in important ways for approaches being developed in the United States (US) and other places (Meltzer & Tielemans, 2022). It is not the belief of Engler (2022) that the EU *alone* will be setting a comprehensive new international standard for AI. He states that the extraterritorial impact will vary widely between sectors and applications (Engler, 2022). Overall, he predicts a more limited global impact of the AI Act than what EU policymakers do (Engler, 2022). Although the AI Act will be the first comprehensive legal framework on AI worldwide it does not mean others have not put guidelines or made smaller-scale efforts for this technology. AI's cross-border nature makes the risks such systems pose a global matter. Naturally, other actors and organizations are also interested in guiding or even regulating AI's development (European Commission, 2023b). The EU is simply early in creating a comprehensive legal framework and thus the most stringent standard in the world.

Based on the nature of the AIA and the fact that the regulation seemingly fulfils all mechanisms needed for the Brussels Effect it is reasonable to assume that there will be at least a *de facto* Brussels Effect. This would entail that providers change their products, not only for the EU market but also for non-EU markets. Engler (2022) believes the AIA will mostly impact online platforms that the EU already has significant global influence over, and only moderately shape international regulation. In other words, it can be interpreted he believes there will be a *de facto* Brussels Effect, but not a significant *de jure* effect. Contrarily, Siegmann and Anderljung (2022) believe that it is likely for the AIA to have both a *de facto* and *de jure* effects. Specifically, the *de facto* effect is likely to be found in large American tech companies (Siegmann & Anderljung, 2022). The thesis expects there will be a *de facto* effect for the AIA and most likely also some extent of a *de jure* effect. Engler does make a good point, and the broad scope of the AIA underlines this, but the thesis argues that despite this there will likely be some extent of a *de jure* effect. Being the first extensive regulation on AI makes it probable for the regulation to become a global standard and blueprint for other jurisdictions. However, only time will tell for certain what kind of extraterritorial impact the AIA will prove to have.

6.4 Conclusions

In summary, this chapter has discussed both the AIA's exemplification of the rights-driven regulatory approach in section 6.2 and the regulations' likely extraterritorial impact in section 6.3. In doing so it has partly answered both main research questions. The AIA clearly exemplifies the EU's rights-driven approach, which is evident in how it fits the characteristics of the concept. There is an obvious connection between the rights enshrined in the Charter and the articles of the AIA, proving how the regulation reflects the values of the Charter and thus of the EU. Further, it allows for government intervention, strengthens and improves citizens' rights, and slightly compromises the Charter's articles 16 and 13. The focus on protecting fundamental rights in the AIA is evident in the proposed regulation documents. This is as expected as the EU has been very prominent about creating trustworthy AI in their statements during the years of proposal negotiations. The extraterritorial impact of the AIA is currently impossible to know for certain, but the thesis does expect it to experience a noticeable impact. The regulation fulfils the first four mechanisms of the Brussels Effect and is likely to achieve non-divisibility after entering into law. It is the opinion of this study that the AIA is very likely to have a significant *de facto* effect and that it is also probable to experience some extent of a *de jure* effect. Due to the AIA being the first comprehensive rules on AI in the world, and considering the field being of a cross-border nature, the likeliness of an extraterritorial impact was expected.

In the next chapter the similarities and differences between the GDPR and the AIA are discussed by comparing the findings from chapters five and six in order to answer the thesis' two sub-questions to the main research questions.

7 Is the AIA following in the footsteps of the GDPR?

This chapter aims to find answers to the two sub-questions of the main research questions presented in the introduction using the findings from chapters five and six. Section 7.1 compares the findings from sections 5.2 and 6.2 to investigate whether the EU's rights-driven regulatory approach is the same for both regulations. It answers the sub-question to the first main research question: *Is the EU's rights-driven regulatory approach the same for the General Data Protection Regulation (GDPR) and the Artificial Intelligence Act (AIA) or are they different?* Section 7.2 does the same concerning the regulations' extraterritorial impact and findings from sections 5.3 and 6.3. It aims to answer the thesis' sub-question to the second research question: *Can we expect the regulations extraterritorial impacts to be similar, or will they be different?* Finally, section 7.3 draws the connection between the two regulations' rights-driven approaches and their extraterritorial impacts. It briefly reflects upon whether and to what extent this combination means that the EU is exporting European values to the rest of the world through its regulations.

7.1 Protecting Fundamental Rights Through Regulation

The findings from sections 5.2 and 6.2 conclude that both the GDPR and the AIA seem to follow the EU's rights-driven regulatory approach. First, this section compares how the two regulations are connected to the Charter and how they focus on fundamental rights in their articles. Then, the GDPR and the AIA compare how they exemplify other characteristics of the concept. Do they reflect the values expressed in the Charter? Do they allow government intervention? Do they strengthen and improve the rights of citizens? Do they sometimes have to compromise certain rights in favour of others to make sure EU citizens are protected against a greater risk?

The focus on fundamental rights is evident in both regulations, but the initial assumption was that it is even more so in the AIA than in the GDPR. The next paragraphs discuss whether this focus is different for the two or not. In both regulations, Article 1 on Subject Matter gives a short overview of what rules and practices they lay down. The GDPR clearly states that the regulation protects the fundamental rights and freedoms of natural persons. The Charter of Fundamental Rights of the EU however is not mentioned. This is interesting because one of the main characteristics of the concept of the EU's rights-driven model is how regulations reflect the values expressed in the Charter. Despite this, it does not necessarily have to be of great importance as the GDPR's Article 1 does mention it protects fundamental rights such as the right to protection of personal data. From section 5.2 we know this correlates with the Charter's Article 8. The AIA proposal from 2021 also does not mention fundamental rights nor the Charter in its Article 1 (OJ C 206, Art.1, 2021). The Council's document from 2024 on the other hand states that the regulation's purpose is to ensure a high level of protection of fundamental rights enshrined in the Charter (Council of the EU, 5662/24, Art.1, 2024, p. 93). Here, it mentions both fundamental rights and more specifically the Charter from which they originate. This seems to have been added more recently as it was not part of the 2021 proposal. The AIA document from 2024 is

more evident about the regulation's focus on fundamental rights and the Charter than the GDPR is.

Müller and Kettemann (2024) are among the few to have researched the EU's approach to regulating digital technologies. They discuss how the EU has changed its stance and ramped up its regulatory actions to address the challenges posed by the digital age. An interesting point they present is how, in the concrete rights of the data subject in the GDPR's chapter three, Article 12 to 23, there are no clear mentions of fundamental rights in the text (Müller & Kettemann, 2024, p.632). They have however found that many provisions of the regulation do refer to fundamental rights, but "unconsciously" (Müller & Kettemann, 2024, p.632). The AIA proposal from 2021 on the other hand mentions fundamental rights in a few places, which this section will demonstrate below (Müller & Kettemann, 2024, p.633). The AIA document from 2024 is significantly more open and vocal about both fundamental rights and their connection to the Charter than the GDPR text.

The thesis's research of the regulation's texts found that fundamental rights are mentioned increasingly more in the articles of the more recent documents e.g. the AIA document from 2024. In the GDPR "*fundamental right*" is mentioned in eight articles; in the 2021 AIA proposal it is mentioned in 14 articles, and the Council's document mentions it in 24 of the regulation's articles (OJ L 119, 4.5, 2016; OJ C 206, 2021; Council of the EU, 5662/24, 2024). This frequency of mention indicates, as stated above, that the EU are more vocal and open about how its regulation of AI aims to protect fundamental rights. Other takes on this is discussed below. Doing the same for "*Charter*" it is found in one article in each document of the regulations. It is, however, only the Council's document from 2024 that clearly mentions the Charter of the EU (Council of the EU, 5662/24, 2024, p.93). The GDPR briefly mentions the Charter in Article 58(4) as does the AIA proposal in Article 52(3), but it is not in focus but rather a brief mention or an afterthought. As mentioned above the AIA document from 2024 explicitly mentions fundamental rights and makes an obvious connection to that of the rights enshrined in the Charter. Here there is no doubt and no "unconscious" reference to the Charter like it is for the GDPR text.

A very important difference is that the area within the technology sector that the GDPR regulates is much smaller than that of the AIA. The GDPR is intended to protect EU citizens' right to the protection of personal data, whilst the AIA is intended to protect several different fundamental rights, including personal data. Where the GDPR is mainly connected to the Charter through the latter's Article 8 and Article 7, the AIA can be connected to several of the Charter's fundamental rights, as accounted for in section 6.2. This may explain why the AIA seemingly focuses more on fundamental rights and the Charter than the GDPR does, which can explain how the 2024 document on the AIA is more open and vocal about its aim to protect fundamental rights than the GDPR. Meanwhile, general information and press releases from the EU do address this focus in the GDPR more clearly. The Commission writes that the Charter stipulates that EU citizens have the right to the protection of their personal data (European Commission, 2024a). Even though the official document of the GDPR does not address this directly, the EU does promote this through other platforms. Regarding the AIA, the EU is very vocal about the regulation's aim to ensure the protection of fundamental rights from high-risk AI systems (European Parliament, 2023a). In other words, the differences in the regulation texts do not mean that the GDPR does not follow the EU's rights-driven approach, only that the regulation text itself is not as focused on promoting this as the AIA text from 2024 is.

Nevertheless, not only the protection of fundamental rights as enshrined in the Charter is a sign of these regulations being cases of the EU’s rights-driven regulatory approach. Allowing government intervention and the high trust in the state make the EU’s regulatory approach stand out from other digital powers. As found in sections 5.2 and 6.2 both the GDPR and the AIA exemplifies the EU’s belief that governments should regulate tech companies in the name of safeguarding individuals’ rights. Both contain measures that ensure more control for the individual as well as requirements and obligations for tech companies, effectively building upon the rights from the Charter and strengthening them. In case of non-compliance with the regulations, the EU has the means to enforce these rules by imposing sanctions. The consequence of not complying with either regulation can include administrative fines up to either €20 million for the GDPR or €35 million for the AIA. Having these rules implemented by the government ensures compliance from all companies accessing the EU market and that all EU citizens’ rights are protected compared to the uncertainty if the market were to regulate itself in this regard.

The concept of the EU’s rights-driven approach also seeks to balance the right to free speech with the fundamental rights that the GDPR and AIA are trying to protect. For example, the EU can restrict online content in social media if it is necessary to protect fundamental rights. The concept believes that sometimes it is necessary to partly restrict one fundamental right in favour of another if this protects EU citizens against a greater risk. This is the case for both the GDPR and the AIA. To protect the right to privacy and data protection, the GDPR compromises the Charters Article 11 on the right to freedom of expression and information. This does not mean that this right is no longer of any importance or relevancy, it means that the GDPR partially restricts the freedom to receive and impart information without interference by public authority. Similarly, the AIA compromises the Charters Articles 16 and 13 on the right to conduct business and the right to freedom of art and science. This is simply due to the ban on unacceptable-risk AI systems and strict regulation of high-risk systems. By banning or restricting these systems it will affect the right to conduct business and the freedom of art and science. The AIA proposal from 2021 also expressed that the Act want to mitigate any potential negative impact on the rights to freedom of expression and assembly from the Charters articles 11 and 12. This means that the AIA is likely to restrict these rights to some degree at times but will aim to ease potential negative effects. This also further underlines the EU’s rights-driven approach’s willingness for government intervention and the high trust in the state.

Table 6 provides a visual of how the GDPR and the AIA fit the characteristics of the concept of the EU’s rights-driven regulatory approach that this section has discussed. Summarizing the findings this way, also gives a clear presentation of the similarities and differences to how the regulations exemplify this approach.

Table 6: Findings on the GDPR and the AIA’s exemplifications of the EU’s rights-driven regulatory approach

| Characteristics | GDPR | AIA |
|---|--|---|
| Focus on fundamental rights and connection to the Charter | Aims to protect the fundamental rights as enshrined in the Charter, the right to: <ul style="list-style-type: none"> • Privacy (Art.7). • Protection of personal data (Art.8). | Aims to protect several fundamental rights as enshrined in the Charter, e.g. the right to: <ul style="list-style-type: none"> • Human dignity (Art.1). • Privacy and data protection (Art.7 & 8). |

| | | |
|--|--|---|
| | | <ul style="list-style-type: none"> • Non-discrimination (Art.21). • Equality between men and women (Art.23). • Workers' rights to fair and just working conditions (Art.31). • A high level of consumer protection (Art.38). • The rights of the child (Art.24). • Integration of persons with disabilities (Art.26). |
| Government intervention | Provides stringent requirements for data controllers and processors. Enforces sanctions for non-compliance. | Banns AI systems of unacceptable risk. Provides requirements and obligations for high-risk systems to access the EU market. Enforces sanctions for non-compliance. |
| Strengthening and improving the rights of citizens | Expands upon relevant rights of the Charter to provide EU citizens with more control over their personal data and privacy. | Expands upon several of the rights of the Charter to protect EU citizens from the harmful effects of unacceptable and high-risk AI systems. |
| Restriction of free speech, online content, or other fundamental rights enshrined in the Charter | Partially restrict the freedom to: <ul style="list-style-type: none"> • Receive and impart information without interference by public authority (Art.11). | <p>Impose some restrictions on the right to:</p> <ul style="list-style-type: none"> • Conduct business (Art.16). • Freedom of art and science (Art.13). <p>Aims to mitigate any negative impact on the rights to:</p> <ul style="list-style-type: none"> • Freedom of expression and assembly (Art.11 & 12). |

Source: Author's own compilation.

In conclusion, both the GDPR and the AIA follow the characteristics of the concept of the EU's rights-driven regulatory approach. Their approaches are very similar, and the few differences detected are likely due to their different range within the technology sector. This is especially visible for the first characteristic in the table above. The GDPR focuses on protecting the right to data privacy while the AIA covers more fundamental rights due to its bigger scope. The concept states that EU rules are drafted specifically to reflect European values. This is evident when looking at how the GDPR and the AIA build directly on relevant fundamental rights enshrined in the Charter. Both allow government intervention and portray the belief that governments should regulate tech companies. By building and expanding upon fundamental rights enshrined in the Charter both regulations help strengthen and improve the rights of EU citizens. The concept's final characteristic is the willingness to compromise one right to better protect another fundamental right, balancing them. The EU does this in the case of both the GDPR and the AIA as displayed in Table 6. This trait is special for the EU's regulatory approach. For example, for the United States and its market-driven model free speech is *the* fundamental right that needs to be protected, but in comparison, the EU seeks to balance the right to free speech with a multitude of other fundamental rights, such as the right to privacy.

7.2 From EU Regulations to Global Standards

Sections 5.3 and 6.3 have found that there is a significant extraterritorial impact of the GDPR, and the thesis expects the AIA to experience at least some level of extraterritorial impact. First, this section compares how the two regulations fulfil the mechanisms of the Brussels Effect to recognise any similarities or differences in their expected extraterritorial impacts. Then, the section discusses the likeliness of the AIA having a similar impact as the GDPR both in scope and regarding the different kinds of Brussels Effect, the de facto and the de jure effects.

As a reminder, the mechanisms of the Brussels Effect are market size, regulatory capacity, stringent standards, inelastic targets, and non-divisibility. According to the concept of the Brussels Effect, the first four are needed for a regulation to have an extraterritorial impact and all five for it to become a global standard. Both market size and inelastic targets are mechanisms that depend more on the EU in general rather than the regulations themselves. The size of the EU market is an incentive for non-EU actors to adhere to the GDPR and the AIA to gain access to its numerous consumers. Similarly, the mechanism of 'inelastic targets' is also something both regulations automatically fulfil. All consumer markets are inelastic, and consumers are the target group for the products and services being impacted by the two regulations. Because EU citizens cannot be moved from the regulations jurisdictions, controllers, processors, and providers of AI systems must comply with the GDPR and the AIA to access the EU market.

Both the GDPR and the AIA are compliant with the mechanisms of regulatory capacity and stringent standards as well. As previously accounted for, both the GDPR and the AIA include sanctions for non-compliance. These are important for the EU's capacity to promulgate and enforce the two regulations as well as attesting to the EU's conscious effort to be a regulatory power. Serious consequences for non-compliance make for a higher compliance rate than otherwise. If there were no consequences for not abiding by the GDPR or the AIA, it would not be effective in protecting the fundamental rights they are meant to protect. The EU has the most complex and stringent rules in the world on data protection and the AIA will be the world's first comprehensive legal framework on trustworthy AI. In other words, both regulations are or will become, the most stringent standards in the world in their fields. This has proven important for the extraterritorial impact of the GDPR, and it is likely to be the same for the AIA. Both mechanisms also portray characteristics of the EU's rights-driven regulatory approach. The belief that the state should regulate tech companies is evident through these means. By adopting such stringent rules for data protection and AI, the EU signals both that the market needs regulation and its priority in protecting EU citizen's fundamental rights.

The final mechanism, non-divisibility, is needed for the regulations to become global standards. It is achieved when global corporations voluntarily choose to standardise their global conduct to comply with EU regulations. The GDPR has achieved this but for the AIA this is still unknown. When a global corporation makes the GDPR the standard for all their services they ensure regulatory compliance and uniformity. Since the GDPR is the most stringent regulation for data protection, companies that adhere to it are then compliant with all other markets' regulatory standards as well. Since the AIA is also a strict regulation and the EU is an attractive market, global corporations will likely do the same for the AIA as for the GDPR. For companies to be able to tell their customers from other parts of the world that they have adopted the EU regulation for their AI systems can also ensure them

a good reputation and make them a more appealing choice. Especially considering that the EU is known for its focus on fundamental rights.

The AIA seems to fulfil the mechanisms of the Brussels Effect very similarly to the GDPR which indicates that it will experience at least some extent of an extraterritorial impact. Combined with AI’s cross-border nature, like data transfers, it is reasonable to assume that the AIA will end up having a similar impact as the GDPR. The two regulations, although both regulating the technology sector, are not the same. The AIA’s scope is broader than the GDPR and covers more than ‘just’ the protection of privacy and personal data as presented in Table 6. Edwards (2021) comments on this, saying that the AIA and GDPR overlap, but that the AIA will not replace the other regulation (p.4). The AIA’s wide scope compared to the more focused range of the GDPR can mean that the extraterritorial impact of the AIA might not be as great, or at least different from the GDPR. Engler (2022) believes that the AIA’s extraterritorial impact will vary widely between sectors and applications. This thesis expects that the broader scope of the AIA compared to the GDPR can mean that the AIA will not have as extensive an impact as the GDPR. However, it is not likely to completely hinder the extraterritorial impact of the AIA.

As concluded in section 6.3, the AIA’s seeming fulfilment of the mechanisms of the Brussels Effect can be assumed to mean that there will be a de facto Brussels Effect. The GDPR has had a significant de facto effect having been embraced as a global privacy standard by several leading tech firms. The fulfilment of the mechanisms together with the similar cross-border nature of personal data and AI systems makes it reasonable to assume that the de facto effect will be somewhat similar for the AIA. Predicting whether there will be a de jure effect proves more difficult. This effect builds directly upon the de facto effect, meaning that a significant de facto effect can lead to a de jure effect over time. As previously explained, the literature on the AIA agrees that the regulation will have an extraterritorial impact, although some disagreement on whether it will extend to a de jure Brussels Effect. At the same time, it is not so unthinkable that it will. After a while when more and more global corporations end up adopting the AIA while domestic corporations in their home jurisdictions do not, they will likely lobby for a national regulation for AI that resembles the EU AIA, like what has happened with the GDPR. This way global corporations will ensure they stay competitive in their home fields as well as globally without complying with several different regulatory standards. In such a case, the AIA will have a de jure effect.

Table 7 provides a visual of the findings for the GDPR and the AIA’s extraterritorial impacts. Both regulations fulfil the first four mechanisms of the Brussels Effect. The GDPR has also achieved non-divisibility and experienced both the de facto and de jure effects. For the AIA’s possible achievements in these areas, the table presents its predictions.

Table 7: Findings on the GDPR and the AIA’s extraterritorial impacts according to the concept of the Brussels Effect

| Mechanisms | GDPR | AIA |
|-------------------|--|---|
| Market size | The EU market has both the size and attractiveness needed for the GDPR to have an extraterritorial impact. | The EU market has both the size and attractiveness needed for the AIA to have an extraterritorial impact. |

| | | |
|--------------------------|--|--|
| Regulatory capacity | The EU impose, and has the means to enforce, sanctions for non-compliance with the GDPR. <ul style="list-style-type: none"> • Administrative fines up to €20 million. | The EU impose, and has the means to enforce, sanctions for non-compliance with the AIA. <ul style="list-style-type: none"> • Administrative fines up to €35 million. |
| Stringent standards | The GDPR is the world's most stringent rules on data protection. | The AIA will be the world's first comprehensive legislation on AI and thus the most stringent regulation in this field. |
| Inelastic targets | EU citizens are inelastic targets. <ul style="list-style-type: none"> • Tech companies cannot move their targets to another jurisdiction to avoid complying with the GDPR. | EU citizens are inelastic targets. <ul style="list-style-type: none"> • Tech companies cannot move their targets to another jurisdiction to avoid complying with the AIA. |
| Non-divisibility | The benefits for corporations to choose the GDPR as their single regulatory standard outweigh the benefits of adhering to laxer standards in other markets. <ul style="list-style-type: none"> • A combination of all five mechanisms has made this happen. | It is likely that the AIA will also achieve non-divisibility due to the fulfilment of the other mechanisms and general similarity to the GDPR. |
| Brussels Effect | | |
| De facto Brussels Effect | The GDPR is embraced as a global privacy standard by American tech firms. Especially significant impact on both American and Chinese companies. | Very likely for the AIA to have a de facto effect due to its fulfilments of the mechanisms and AI systems' cross-border nature. |
| De jure Brussels Effect | Nearly 150 countries have adopted domestic privacy laws, and the majority resemble the EU data protection regime. The GDPR has served as a blueprint for similar regulations in several countries outside the EU. | Over time it is likely for the AIA to experience a de jure effect, but due to its broad scope, it might not be as significant as that of the GDPR. |

Source: Author's own compilation.

In conclusion, we can expect the extraterritorial impact of the AIA to be quite similar to that of the GDPR. This is evident from the comparison in Table 7. There are many similarities between the two regulations. They both regulate the technology sector and fulfil the mechanisms of the Brussels Effect. The mechanisms witness that the regulations are generally 'built' the same. Additionally, by regulating areas with a cross-border nature this combination puts the two up for having extraterritorial reaches. This thesis expects that there will be a significant extraterritorial effect on the AIA. Most certainly a de facto Brussels Effect and over time also a de jure Brussels Effect. Whether the AIA will reach the same level of extraterritorial impact as the GDPR is difficult to foresee, but due to the AIA's much wider scope compared to the other regulations, the de jure effect might not prove as significant as that for the GDPR.

7.3 Vehicles for Exporting European Values

We now know that both the GDPR and the AIA are very similar to each other in their exemplification of the EU's rights-driven regulatory approach. The thesis has also concluded that the AIA will possibly have an extraterritorial impact similar to that of the GDPR. After reaching these conclusions it is natural to also address the connection between the EU's rights-driven regulatory approach evident in both regulations and ask whether their extraterritorial impact means that the EU is exporting European values through its regulations.

The European Commission has stated that European values are closely linked to both the Union's internal and external actions (European Commission, 2024b). Considering the previously mentioned 'race' to regulate AI and the EU's ambitions to be the first to do so and for it to become a global standard, it can be assumed that the EU wants to export its values to the rest of the world. However, it is worth noting that this could also just be a sign of the EU wanting to exercise regulatory power within the digital economy. Newman and Posner (2011, p. 595) define regulatory power as the potential of authorities and corporations based in one jurisdiction to influence the decisions and arrangements in another. This is fitting to the concept of EU regulations having extraterritorial impacts. Whether the EU just wants to exercise power or not, how the EU aims to influence the world harmonises with its rights-driven approach. It is a rather 'soft' approach to go about exercising power by essentially exporting European values. Bradford (2005) claims that traditional power such as raw military power, economic sanctions, or conditional incentives, has waned in importance as it is increasingly difficult to exert influence through these tools, while regulatory power on the other hand is still relevant. Overall, the EU's approach to both regulating its own market and exuding power beyond the Union through these regulations, tells us that the EU overall might have a softer approach than other international actors. Especially when the EU's regulatory power contributes to non-EU actors, and even some states, adopting a regulatory standard that protects individuals' fundamental rights.

The European Parliament wrote in December, after the provisional agreement was reached, that the AIA aims to ensure the protection of fundamental rights while making Europe a leader in the field (European Parliament, 2023a). This can be interpreted as the EU actively aiming to export European values protected by the AIA. The European Council and the Council of the EU state that the AIA can set a global standard and by doing this the EU wants to pave the way for a global approach that is ethical, safe, and trustworthy (Consilium, 2024). The obvious focus on protecting fundamental rights together with these statements on becoming a leader in the field suggests that the EU does in fact want to "export European values". Slowly, but surely, the EU's regulation on trustworthy AI might have a global impact and European values will hence be exported to the rest of the world, like what the EU has been able to do with the GDPR.

As we know, the GDPR has been embraced by global corporations as a global standard and nearly 150 countries have adopted similar laws inspired by the EU regulation. Simply put, the EU has been able to export its rights-driven agenda and European values to countries that have different approaches to regulating the digital economy. As global corporations, and later also governments, either complied with the EU's regulation for data protection or made their own standards based on the GDPR, the rights-driven approach to regulating data has been 'exported' to the rest of the world. As this thesis has found, the EU's focus on protecting fundamental rights enshrined in the Charter – European values – is very

prominent in its regulatory approach to the technology sector. When non-EU actors adopt these regulations, they adopt regulations meant to protect individual rights. In other words, the AIA will prove important in the works of creating global rules for AI and have an extraterritorial effect spreading the rights-driven regulatory approach, like the GDPR.

In summary, by exporting regulations that follow the EU's rights-driven regulatory approach, which aims to protect the fundamental rights as enshrined in the Charter, it can be argued that the EU is exporting European values when its regulations happen to experience extraterritorial impacts. This is also an example of the EU exercising regulatory power and proves a rather 'soft' approach to doing so. It is the opinion of this thesis that the combination of the EU's rights-driven regulatory approach, and the GDPR and AIA's (possible) extraterritorial impacts already has, or will, result in European values being exported.

8 Conclusions

This new digital era brings with it many valuable new tools for further development but also harmful consequences. The digital economy is of a cross-border nature and consumers enjoy digital systems created by multinational companies from markets other than their own. The European Union (EU) believes that it is the state's responsibility to protect individuals' fundamental rights from the harmful effects of digital systems. To do so, technology companies need to be regulated. This thesis has investigated how the EU's rights-driven regulatory approach is exemplified in two of the EU's regulations within the technology sector, the General Data Protection Regulation (GDPR) and the Artificial Intelligence Act (AIA). It has also made an effort to predict whether the AIA will have a similar extraterritorial impact as the GDPR and possibly become a new global standard set by the EU.

The first main research question asks: *How and to what extent do the GDPR and the AIA exemplify the EU's rights-driven regulatory approach?* The following sub-question asks: *Is this approach the same for the two regulations, or are they different?* It was found that both the GDPR and the AIA exemplify the EU's rights-driven regulatory approach according to the characteristics of the concept. Initially, before the research was conducted, it seemed like this approach would not be as evident in the GDPR compared to the AIA. The thesis however found that this approach is very similarly exemplified in the two regulations. This is presented in Table 8.

Table 8: Summary of findings on the GDPR and the AIA's exemplifications of the EU's rights-driven regulatory approach

| Characteristics | GDPR | AIA | Elaborations |
|---|-------------|------------|--|
| Focus on fundamental rights and connection to the Charter | Yes | Yes | Both regulations prove a clear connection to relevant articles enshrined in the Charter. |
| Government intervention | Yes | Yes | Both regulations provide strict requirements for tech companies and allow the EU to enforce sanctions for non-compliance. |
| Strengthen and improve the rights of citizens | Yes | Yes | Both regulations are expansions of the relevant rights in the Charter to better protect these rights from harmful effects within the technology sector. |
| Restriction of free speech, online content, or other fundamental rights | Yes | Yes | Both regulations pose some restrictions to other fundamental rights enshrined in the Charter to sufficiently protect the fundamental rights they are meant to protect. |

Source: Author's own compilation.

The two regulations both reflect the values expressed in the Charter, allow government intervention, strengthen and improve the rights of citizens, and at times have to

compromise certain rights in favour of others to make sure EU citizens are protected against a greater risk. This last characteristic is very interesting and seems to be closely connected to the characteristic of allowing government intervention. The EU’s regulatory approach being driven by its goal to protect fundamental rights also includes protecting democratic discourse. This can help explain EU citizens' high trust in the state and thus trust in the EU to hold the technology sector accountable to not be harmful towards EU citizens. To be able to do that, there seems to exist an understanding that other fundamental rights such as free speech must sometimes be partially restricted.

The main difference between the two is the wording in each of their texts and the rights-driven focus found there. Although it is found that both regulations fit the concept’s characteristics, it is still interesting to examine where they are slightly different. In the articles of the GDPR, ‘fundamental right’ was mentioned eight times while in the AIA document from 2024, it was mentioned 24 times. Even though the GDPR fulfils the criteria of the EU’s rights-driven regulatory approach, it is interesting to see how much more open and vocal the text of the AIA is when it comes to fundamental rights. For the GDPR this rights-driven approach is referenced more unconsciously, while the AIA text is very clear in this approach. Chapter 7 found that this can be explained by the fact that the scope of the AIA is much broader than that of the GDPR. Since the AIA covers more fundamental rights from the Charter than the GDPR it makes sense for this regulation to have a stronger focus on this. Due to this difference, the initial expectation was that the rights-driven approach would not be as evident in the GDPR as the AIA. Hence, the similarities of the two regulations are surprising as it was expected for them to be more different than they are. To some extent, this can still be argued considering the difference in their texts, but overall, both regulations are solid exemplifications of the EU’s rights-driven regulatory approach. The only difference is that the GDPR text references this more ‘unconsciously’.

The second main research question asks: *What is the scope of the GDPR’s extraterritorial impact and what extraterritorial impact can be expected for the AIA?* The following sub-question asks: *Can we expect their extraterritorial impact to be similar, or will they be different?* It was found that the GDPR and the AIA have several similarities, but also differences, regarding their potential extraterritorial impacts. By comparing how the GDPR fulfils the mechanisms of the concept of the Brussels effect and its tangible extraterritorial impact, the thesis has been able to present its estimated predictions of the AIA’s possible impact. Table 9 presents a visual summary of the findings in each of the regulations in accordance with the concept of the Brussels Effect.

Table 9: Summary of findings on the GDPR and the AIA’s extraterritorial impacts according to the concept of the Brussels Effect

| Mechanisms | GDPR | AIA | Elaborations |
|---------------------|-------------|------------|--|
| Market size | Yes | Yes | The size and attractiveness of the EU market are incentives for non-EU actors to adhere to the GDPR and the AIA. |
| Regulatory capacity | Yes | Yes | Both regulations include sanctions for non-compliance. |
| Stringent standards | Yes | Yes | The GDPR is the world’s most stringent rules on data protection and the AIA will be the world’s first comprehensive legislation on AI. |

| | | | |
|--------------------------|-----|-------------|--|
| Inelastic targets | Yes | Yes | Consumer markets are inelastic. Global corporations cannot move their targets, EU citizens, to another jurisdiction. |
| Non-divisibility | Yes | Very likely | Very likely that the AIA will also achieve non-divisibility due to the fulfilment of the other mechanisms and similarities to the GDPR. |
| Brussels Effect | | | |
| De facto Brussels Effect | Yes | Very likely | Very likely for the AIA to have a de facto effect due to its fulfilments of the mechanisms and AI systems' cross-border nature. |
| De jure Brussels Effect | Yes | Likely | Over time it is likely for the AIA to experience a de jure effect, but due to its broad scope, it might not be as significant as that of the GDPR. |

Source: Author's own compilation.

The GDPR is a paramount example of an EU regulation having an extraterritorial impact. It fulfils all the mechanisms of the Brussels Effect, even non-divisibility, which is needed for a regulation to become a global standard. The AIA, although not yet put into force, already fulfils the first four mechanisms: market size, regulatory capacity, stringent standards, and inelastic targets. Market size and inelastic targets are not dependent on the regulation itself but rather on the EU. Through the fulfilment of regulatory capacity, the EU and the AIA prove that the EU impose, and has the means to enforce, sanctions for non-compliance with the AIA. The regulation will also be the world’s first comprehensive rules on AI, and thus the most stringent ones. These four mechanisms are important for the AIA to achieve non-divisibility, as explained in previous chapters. This thesis expects the AIA will experience an extraterritorial impact considering its fulfilment of the first four mechanisms, AI systems’ cross-border nature, and the regulations overall similar ‘build’ as the GDPR. It is also presumed very likely to achieve non-divisibility.

Overall, the thesis’ findings support the view that the AIA will have a somewhat similar extraterritorial impact as the GDPR, with maybe some differences, like a less significant de jure effect. It is very likely that the AIA will have a de facto Brussels Effect since it seems probable it will fulfil all mechanisms of the Brussels Effect. In other words, the AIA has the potential to have a significant extraterritorial impact. Regarding the regulations' possible de jure effect it is expected that over time when the AIA has experienced a significant de facto effect, global corporations are likely to lobby their home jurisdictions into adopting AI regulations similar to the AIA. However, it is considered that the AIA’s de jure effect might not be as significant as that of the GDPR. This belief is due to the AIA regulation being much broader in scope than the GDPR and because of this, it might not be as likely that a huge number of foreign governments will adopt such a complex AI regulation. To answer the second sub-research question directly: this thesis expects that the AIA will experience a fairly similar extraterritorial impact as the GDPR, but possibly not as extensive due to the AIA regulation’s broader scope.

It can be argued that when EU regulations exemplify the rights-driven approach and have an extraterritorial impact, the EU is exporting European values. This is an interesting take on the combination of the EU’s focus on protecting fundamental rights as enshrined in the Charter of the EU, and these regulations impacting corporations and markets outside of

the EU. It is especially interesting when considering that the EU seems to actively aspire for its regulations to become global standards, and hence reach beyond the EU market. This is also an exemplification of the EU's regulatory power and witness the rather 'soft' approach of the EU. This approach is evident both when it comes to the EU regulating its own market to protect EU citizens' fundamental rights, but also when it comes to exercising power on the global stage.

A limitation of this study is that the AIA is not formally adopted at this time and therefore it is not possible to know for certain what its extraterritorial impact will be. The thesis' findings on this matter are therefore not definite conclusions to this puzzle and only time will tell whether it turns out to be the case or not. If this study were to be continued, several years after the AIA's adoption into EU law, it would be interesting to investigate whether the outcome corresponds with this thesis' predictions. Another element that would be interesting to further investigate is the combination of EU regulations' rights-driven approach and their extraterritorial impacts. Due to limitations in time and the thesis' scope, it has not been possible to do in-depth research and investigation on this topic, but it would be a highly relevant next step in the research of this study.

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